

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**  
**Transcript of Trial Proceedings on 01/18/2019**

1 IN THE SUPERIOR COURT OF FULTON COUNTY

2 STATE OF GEORGIA

3

4 COALITION FOR GOOD . CIVIL ACTION  
 GOVERNANCE, RHONDA J. . FILE NO.: 2018-CV-313418

5

6 MARTIN, SMYTH DUVAL, and .  
 JEANNE DUFORT, . Taken at:

7

8 Plaintiffs, . Superior Court of Cobb County

9 vs. . 70 Haynes Street

10 ROBYN A. CRITTENDEN, . Courtroom 402-M

11 Secretary of State of . Marietta, Georgia 30090  
 Georgia, et. al .

12

13 Defendants. .  
 . . . . .

14

15

16 TRANSCRIPT OF TRIAL PROCEEDINGS

17

18 FRIDAY, JANUARY 18, 2019

19

20 9:04 a.m. to 10:49 a.m.

21

22 STATE OF GEORGIA SENIOR JUDGE ADELE P. GRUBBS  
 REPORTED BY:

23

24 PRISCILLA GARCIA, COURT REPORTER  
 NOTARY PUBLIC, STATE OF GEORGIA

25

26 TRANSCRIBED BY:

27

28 CHRISTIAN NAADEN

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 2**

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**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 3**

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**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 4**

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**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 5**

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**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.****Transcript of Trial Proceedings on 01/18/2019****Page 6**

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2

I-N-D-E-X

3

4

WITNESS

DIRECT

CROSS

REDIRECT

RECROSS

Terri R. Thomas

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14

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Richard Barron

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EXHIBITS:

DESCRIPTION

PAGE

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NONE

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**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 7**

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COBB COUNTY, GEORGIA

FRIDAY, January 18, 2018 - 9:04 a.m.

5

6

\* \* \* \* \*

7

8

THE COURT: Good morning, ladies and gentlemen. Take

9

your seats, if you will. I am a minute or two late, but

10

they wanted us to move again at noon.

11

MR. LINDSEY: Oh.

12

THE COURT: And I refused, so I've been working that

13

little problem out; okay?

14

MR. LINDSEY: Thank you, Your Honor.

15

MR. TYSON: Thank you.

16

THE COURT: One move is enough; we shouldn't have had

17

to do that. So we'll see where we go. Okay. Day two,

18

where are we, Mr. Brown? Good morning.

19

MR. BROWN: Good morning, Your Honor. We have an eye

20

witness who will testify as to her voting experience who  
is going through security right now.

21

22

THE COURT: Going through security; okay?

23

MS. BROWN: And then we'd like to put up her first,

24

but if we don't do that we would, you know --

25

THE COURT: We'll give -- we'll give her a minute,

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 8**

1 if --

2 MS. BROWN: And then we have --

3 THE COURT: Twice the bailiffs in the box, is that

4

5 what we've got? Boy, if you were a jury like -- that --  
6 that's an interesting jury up there in that box.

7

8 MR. LINDSEY: Your Honor, I want to see if you  
9 [inaudible] making sure everything's in line as to the

10

11 rule of [inaudible] in place.

12 THE COURT: Do what?

13 MR. LINDSEY: The rules.

14 THE COURT: The rules of sequestration is in force.

15 MR. BROWN: Your Honor --

16

17 THE COURT: Okay?

18 MR. BROWN: -- as to the rule of sequestration --

19

20 THE COURT: What?

21 MR. BROWN: The -- the question that -- there's law

22

23 that the rule of sequestration does not apply to a

24 rebuttal expert witnesses, and so we would --

25 THE COURT: Only if it's a rebuttal expert to an

26

27 expert.

28 MR. BROWN: Or to expert testimony or to --

29

30 THE COURT: We'll -- we'll address the issue when we  
31 get there.

32

33 MR. BROWN: Thank you, Your Honor. Your Honor, we

34

35 would call Terri Thomas to the witness stand.



**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 9**

1 THE COURT: Whose is this? Okay.

2 MR. BROWN: Please raise your right hand. Do you  
3 promise to tell the truth, the whole truth and nothing but

4 the truth?

5 THE WITNESS: I do.

6 MR. BROWN: Have a seat.

7 THE WITNESS: Thank you.

8

9 P R O C E E D I N G S

10 \* \* \* \* \*

11 Thereupon:

12

13

14

TERRI R. THOMAS

15

16

was called as a witness, and having been first duly

17

sworn in, and testified upon her oath as follows:

18

19

DIRECT EXAMINATION

20

OF TERRI R. THOMAS

21

22 BY MR. BROWN:

23

Q. Please state your name for the record?

24

A. Terri R. Thomas.

25

MR. BROWN: Ms. Thomas, my name is Bruce Brown, and I

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 10**

1 am the attorney for the petitioners in this case.

2 THE WITNESS: Okay.

BY MR. BROWN:

3

4 Q. Where are you from?

5 A. I'm from Los Angeles.

6

7 Q. And where do you live now?

8 A. I live in Lithonia, Georgia.

9

10 Q. And did you drive from Lithonia this

11 morning here?

12 A. Yes.

13 Q. Did you vote on November 20, 2018?

14 A. I did.

15

16 Q. And where did you vote?

17 A. At Lithonia High School.

18

19 Q. And when -- and did you vote on an

20 electronic machine with a screen?

21

22 A. I did.

23 Q. And when you -- did you pull up the ballot  
24 on the screen?

25

26 A. I put the little card in the machine, yes.

27 Q. Did the ballot then appear for the

28

29 governor's race?

30 A. Yes, sir.

31

32 Q. Did the lieutenant governor's race appear

33 on the first several pages of the ballot?

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 11**

1           A.    No.

2           Q.    How do you -- how do you know? How do you  
3           remember that?

4           A.    Well, like I said, I'm from Los Angeles,  
5           and when I first -- the first thing that popped up  
6           was the governor's race, and the first thing that I  
7           saw were these two large squares. And I was thinking  
8           to myself, "Georgia sure is making sure we know which  
9           candidate we're voting for. There are only --  
10          there's only one category on this page, and I didn't  
11          even -- it didn't even dawn on me that there was a  
12          third person running, because their little box was so  
13          small on the writing outside.

14          Q.    Did you -- did you see at any point in  
15          going through the ballot, the election -- the race  
16          between Amico and Duncan?

17          A.    Not initially.

18          Q.    When was the first time you saw Amico's  
19          name?

20          A.    It was -- I had gone through -- I had voted  
21          for everything except one amendments because I wasn't  
22          familiar with them, and then it was at the end of my  
23          ballot, and it dawned on me that I hadn't voted for  
24          her, so I just kept going previous and went all the  
25          way back to the beginning of the ballot.

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 12**

1 Q. And when you went back to the beginning of  
2 the ballot, did you see her -- her name on the race?

A. I did.

3  
4 Q. Okay. And did you -- were you able to cast  
5 a vote then?

6 A. Yes.

7 Q. Okay. And do you have any -- and then you  
8 went forward to the summary?

9 A. Correct, to the end, yes.

10 Q. Okay. And you cast your ballot?

11 A. Yes.

12 Q. Okay. Were there any other malfunctions in  
13 the screen?

A. Not that I noticed.

14  
15 Q. Not that you noticed. And did you complain  
16 to anyone about the -- about the voting?

17 A. Not at the poll.

18 Q. Okay. Did you thereafter?

A. I'm sorry?

19  
20 Q. Thereafter that, did you?

A. I did. I did. The first person I talked

21  
22 to was my daughter, because we usually go vote  
23 together and she left me that morning. And so she

24 had already voted, and when I got back home I was

25 telling her what happened to me. And she told me

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 13**

1           that's not what she experienced.

2           Q.     Okay.

3           MR. BROWN: Thank you very much.

4           THE WITNESS: Oh, you're welcome.

5           THE COURT: Any questions?

6           THE WITNESS: Excuse me.

7           MR. LINDSEY: Just a few quick questions, ma'am.

8           THE WITNESS: Yes. I was just going to finish my

9     statement here. I didn't finish.

10          MR. LINDSEY: Oh.

11          THE COURT: You're not here -- you have to be asked  
12     questions; okay? If they don't ask you the direct

13     question you want them to ask you, you don't get to tell  
14     it.

15          THE WITNESS: Okay.

16          THE COURT: Okay?

17          THE WITNESS: But it was about the previous question

18     he asked.

19          THE COURT: Well --

20          THE WITNESS: That's fine.

21          THE COURT: What do you think, Mr. Lindsey?

22          MR. LINDSEY: Your Honor, she's a good voter from  
23     Georgia. Please let her go ahead and finish it.

24          THE COURT: Okay.

25          THE WITNESS: I'm sorry.

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 14**

1 THE COURT: Okay, finish then.

2 MR. LINDSEY: Go ahead, ma'am.

3 THE WITNESS: Oh. I'm sorry. You had asked if I

4 complained about that. Like I said, the first person was  
5 my daughter. The next thing I did that night or the next

6 morning, I wrote an email.

7 MR. BROWN: Okay.

8 BY MR. BROWN:

9 Q. And when -- the first time that you looked  
10 at the ballot screen?

11 A. Yes.

12 Q. When you first looked at it?

13 A. Yes.

14 Q. Was Amico's name on there?

15 A. No, sir.

16 Q. And were you looking to vote for her?

17 A. Yes.

18 Q. And you didn't see it on the first screen?

19 A. Correct.

20 MR. BROWN: Thank you.

21

22 CROSS-EXAMINATION  
23 OF TERRI R. THOMAS

24

25

BY MR. LINDSEY:

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 15**

1 Q. Was this the first time that you've voted  
2 in Georgia?

3 A. No, sir.

4 Q. Okay. I hate to ask a woman this, but how  
5 -- how old are you, ma'am?

6 A. I am 62.

7 Q. Thank you. And you were -- how many times  
8 have you voted in Georgia?

9 A. Probably about seven to eight times.

10 Q. Okay. And so, you went all the way  
11 through?

12 A. Correct.

13 Q. And then when -- then you went back, and it  
14 was on the screen; correct?

15 A. Yes, sir.

16 Q. You voted for Ms. -- I take it you voted  
17 for Ms. Amico?

18 A. I did.

19 Q. Okay. And when you talked to your  
20 daughter, your daughter said that she didn't have any  
21 problems?

22 A. Correct.

23 Q. Okay.

24 MR. LINDSEY: No further questions.

25 THE COURT: Anything else, Mr. -- anyone else? Oh,

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 16**

1 Mr. Tyson.

2 MR. TYSON: Yes. Just briefly. Hello, Ms. Thomas,  
3 my name is Bryan Tyson. I represent the Gwinnett County

4 Board of Registrations and Elections.  
5 BY MR. TYSON:

6 Q. I just wanted to ask, when you said, when  
7 you first looked at the ballot you said, you saw "two  
8 squares" when they came on there?

9 A. Correct.

10 Q. And you -- I'm assuming you were looking to  
11 vote in the governor's race. Is it possible that the  
12 lieutenant governor's race was there, and you just  
13 missed it the first time?

14 A. No, sir. No, sir. I'm retired; I have  
15 plenty of time.

16 Q. Okay. And then your daughter, is she  
17 involved at all with the coalition or any groups that  
18 are interested in voting issues?

19 A. No, sir.

20 Q. Okay. And then, you said that there was a  
21 third person running. Did you say that it was

22 "smaller or difficult to see?" Can you describe for  
23 me what that was on that first screen?

24 A. I'm guessing it was -- it was Republican  
25 and Democrat and Independent --



**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 17**

1 Q. Yes?

2 A. -- but his square was so small. Like I  
3 said, I was amazed because I was thinking -- you're

4 going to make sure I know who I'm voting. This is  
5 the only category on this page, and the squares were

6 so large, and he had a little square [inaudible] just  
7 looking at him.

8 Q. Thank you.

9 MR. TYSON: I don't have any further questions.

10 THE WITNESS: You're welcome.

11 THE COURT: Okay.

12 MR. BROWN: Your Honor, I have no further questions,

13 and may the witness be excused?

14 THE COURT: The witness may be excused.

15 MR. BROWN: Thank you very much.

16 THE COURT: Have a safe drive back to your home.

17 THE WITNESS: Thank you.

18 MR. BROWN: Thank you very much.

19 THE WITNESS: You're welcome.

20 MR. BROWN: Your Honor, the plaintiffs would call  
21 Richard Barron. Please state -- do you promise to tell

22 the truth, the whole truth, and nothing but the truth?

23 THE WITNESS: Yes.

24 MR. BROWN: Have a seat.

25

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 18**

1 P R O C E E D I N G S

2 \* \* \* \* \*

3

4 Thereupon:

5

6 RICHARD BARRON

7

8 was called as a witness, and having been first duly

9 sworn in, and testified upon his oath as follows:

10

11 DIRECT EXAMINATION  
12 OF RICHARD BARRON

12

13

14 BY MR. BROWN:

14

15 Q. Please state your full name for the record?

16 A. Richard Barron.

16

17 Q. And by whom are you currently employed?

18 A. Fulton County.

19 Q. And what is your position with Fulton

19

20 County?

21 A. Director of Registration and Elections.

21

22 Q. How long have you had that position?

23 A. Five and a half years.

23

24 Q. What does a director of registration and

25 elections do?

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 19**

1           A.    I'm in charge of -- of administering all  
2   the elections for Fulton County, taking care of all  
3   the polling places, training the poll workers,  
4   dealing with the media, and overseeing the voter  
5   registration rolls.

6           Q.    And how many full-time employees do you  
7   have?

8           A.    18.

9           Q.    And during the election, how many part-time  
10 employees do you have or contractors?

11          A.    Well, it depends on -- it's usually about  
12 60. That increases during early voting.

13          Q.    Okay. You were here in yesterday's --  
14 during yesterday's testimony; correct?

15          A.    Yes.

16          Q.    Okay. I would like to ask you some  
17 questions, and I want to make sure I'm clear. There  
18 is an election server at the Secretary of State's  
19 office, to the best of your understanding; correct?

20          A.    Correct.

21          Q.    And then separately, there's what we would  
22 -- what some people call the GEM server at the  
23 county; is that correct?

24          A.    Yes.

25          Q.    And is it your understanding that the

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 20**

1 election server at the Secretary of State was  
2 reinstalled with a trusted copy of the GEMS software  
3 after it had been compromised in 2016?

4 A. I have no --  
5 MR. TYSON: Object on that, Your Honor. I don't

6 think there is any foundation that's Mr. Barron's going to  
7 have knowledge about what the Secretary of State's servers  
8 going to have or anything else.

9 THE COURT: But -- I --

10 MR. LINDSEY: I believe that they haven't laid a  
11 proper foundation that there has been any type of  
12 compromise with the GEMS system.

13 THE COURT: We had testimony yesterday. You actually  
14 have him on direct and you're leading. That question  
15 wasn't what you had previously. I sustain the objection  
16 to it.

17 MR. BROWN: Your Honor, may I treat him as a -- treat  
18 him on cross as an adverse?

19 THE COURT: No, sir. You called him for -- you  
20 called him on direct.

21 MR. BROWN: Okay.

22 BY MR. BROWN:

23 Q. Was Fulton County's GEMS server replaced in  
24 2016 or 2017?

25 A. I don't recall.

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 21**

1 Q. Okay. Did Fulton County take efforts after  
2 2016 to disinfect Fulton County's GEMS database?

3 MS. BURWELL: Your Honor, I am going to object to

4 assuming facts.

5 MR. BROWN: Let the record reflect that the witness

6 shook his head "No." Go ahead.

7 MS. BURWELL: Your Honor, his question assumes facts

8 that are not in evidence that there was something that

9 needed to be done. He hasn't laid a foundation.

10 THE COURT: Well, he just asked did they do it after

11 2016. That doesn't reflect -- he just -- I don't know why  
12 I don't have a mic this morning. He just -- the question

13 is okay the way it is; okay?

14 THE WITNESS: I don't -- I don't understand what you

15 mean by "disinfect."

16 BY MR. BROWN:

17 Q. Was it examined for malware or any other  
18 defects?

19 A. Not that I'm aware of.

20 Q. Was any of Fulton County's memory cards  
21 that they used, were any of those memory cards

22 disinfected after 2016?

23 A. No.

24 Q. In 2018, you would have created a new

25 memory card for the 2018 election; correct?

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 22**

1 A. Yes.

2 Q. And those -- those memory cards would have  
3 been the same memory cards that had been used in

4 previous elections; correct?

5 A. Yes.

6 Q. Elections prior to 2016; correct?

7 A. Yes.

8 Q. And you would have -- did you make those  
9 memory cards from your GEMS -- your county GEMS  
10 database?

11 A. Yeah. They -- that's where everything  
12 originates, yes.

13 Q. Do you have any reason to believe that the  
14 process that you go through in making the -- the  
15 well, let me back up a little bit. Do you know if  
16 other counties disinfected their memory cards after  
17 2016 or not?

18 A. I still don't understand what you mean by  
19 "disinfect," but I have no knowledge of any other  
20 counties.

21 Q. Okay. Fair enough. Let me make sure  
22 you're understanding my question. When I -- when I  
23 say "disinfect," what I mean is to do anything to  
24 remove any malware or mis-program [sic] that might be  
25 on that particular device?

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 23**

1 A. No.

2 Q. And so the answer is, your -- you didn't do  
3 that with the memory cards; correct?

4 A. No.

5 Q. Okay. And you, to -- to the best of your  
6 knowledge, did any other counties do that?

7 A. I have no -- no knowledge of that.

8 Q. One way or the other?

9 A. No.

10 Q. Fair enough. Prior to the -- to the -- the  
11 November 2018 election, did Fulton County review its  
12 GEMS database to determine if there were any coding

13 errors on that GEMS database?

14 A. No.

15 Q. You were here yesterday, and did you -- do  
16 you recall the testimony of Sara LeClerc?

17 A. Was she the poll watcher?

18 Q. Yes?

19 A. Yes.

20 Q. Were you -- do you recall what county she  
21 was -- had been overseeing?

22 A. What county?

23 Q. It was Fulton County, correct, and AME  
24 church?

25 A. Yes.

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 24**

1 Q. That's one of your precincts; correct?

2 A. Correct.

3 Q. Did you get a report of the incidents that  
4 she described when you were in -- during the  
5 election?

6 A. I didn't personally, no.

7 Q. Are you aware of someone in your office  
8 getting a report like that? A report from AME or  
9 about AME?

10 A. I -- I became aware of it through this --  
11 this process, the court case.

12 Q. And -- and what is your understanding of --  
13 of the information that was received by your office?  
14 MS. BURWELL: Objection, Your Honor. He said that he

15 learned of it through this lawsuit, not through his office.  
16 THE COURT: Sustained.

17 BY MR. BROWN:

18 Q. At any time, not in the November election  
19 or not contemporaneously, but did you gain an  
20 understanding of what happened at the AME Temple at  
21 the church -- the AME Temple precinct?

22 A. I -- I've been made aware of the complaint,  
23 yes.

24 Q. And did you or anybody under your  
25 supervision do any kind of investigation to determine



**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 25**

1     why that happened?

2             A.     Yes.

3             Q.     And what did you find?

4             A.     We found -- well, we found that the -- the  
5             poll worker -- the poll worker had an issue with that

6             voter, and then she -- she took down the machine, and  
7             then later she reopened the machine later in the day.

8             Q.     Did anybody on your staff inspect the  
9             machine to see if there were any coding errors or  
10            anything like that?

11            A.     It's my understanding -- no, we didn't look  
12            for coding errors.

13            Q.     Did you look for any mechanical type of  
14            errors that weren't electronic, like with the screen  
15            operation?

16            A.     No, not that day.

17            Q.     Ever?

18            A.     I don't think so, no.

19            Q.     Did you do any sort of examination of -- of  
20            any of the DRE machines that Fulton County used after  
21            the 2018 election?

22            A.     We -- no. We immediately had to turn those  
23            around for the -- the December election.

24            Q.     And when you -- you said you had to use  
25            them for the December runoff?

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 26**

1 A. Yes.

2 Q. And when you used those for the December  
3 runoff, do you reprogram them with a different

4 election memory card?

5 A. Yes. And they're -- yes.

6 Q. Okay. And so, at that point it would be --  
7 describe that process for me, please?

8 A. Well, we have to run them through -- once  
9 we get the database in, and we load the election, we  
10 run them through a live -- a logic and accuracy

11 testing. We also -- we -- we calibrate them to make  
12 sure the time and date are correct. Just some basic

13 things that we do to get ready for them -- to get  
14 ready for the election and then the logic and

15 accuracy testing.

16 Q. Does that involve reprogramming the  
17 machines?

18 A. Well, we -- we insert a new card in there,  
19 and that has the new election on it.

20 Q. And does -- and does the insertion of the  
21 new card and the running of these tests alter the

22 internal memory?

23 A. No.

24 Q. And how do you know?

25 A. I mean, it's not my understanding that it

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 27**

1 does. It doesn't erase anything that's on there.

2 There's a hard packet that stays on there from the  
3 beginning, the life of the machine.

4 Q. How -- how do you know that?

5 A. That's -- well, because that's what I've  
6 learned using these -- this equipment.

7 Q. Have you done any -- any forensic

8 examination of the -- the unit to determine if any  
9 changes are made to that memory by reprogramming?

10 MR. TYSON: Your Honor, I'll object to that. I don't  
11 think the foundation laid by Mr. Barron would have the  
12 type of capability to observe or the skill to do that. It

13 needs to be laid first before we get into that.

14 THE COURT: Well, he can answer the question. He's

15 only talking for himself.

16 THE WITNESS: No.

17 BY MR. BROWN:

18 Q. Has anybody under your supervision done  
19 that?

20 A. No.

21 Q. Are you aware of any scientific or computer  
22 scientific opinion to the effect that reprogramming  
23 the machines for the subsequent election has altered  
24 the memory of the machines?

25 A. No.

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 28**

1 Q. You're not aware of that at all? You never  
2 heard of that opinion?

A. No.

3

4 Q. You never heard that opinion expressed by  
5 Mr. Bernhard?

6

7 THE COURT: Enough; okay? That -- that -- and I  
8 understand you're an advocate and I respect that, but

9

10 that's far enough on that line of thought.

11 MR. BROWN: Thank you, Your Honor.

12 BY MR. BROWN:

13 Q. What is a voter access card?

14 A. That is -- that is the -- the yellow card

15

16 that has a chip on it that you -- when -- when a  
17 voter checks in, you put it in -- the poll worker

18

19 puts it into the Express Poll to -- so that it -- it  
20 will indicate which ballot on the DRE is accessible

21

22 by that voter.

23 Q. It's -- if you will, it's created by the  
24 express electronic poll booth?

25

A. Yes, the Express Poll.

Q. The Express Poll. And is the Express Poll

part of the registration system in any way?

A. Well, the -- the voter registration

database is loaded with the information for the --

for everyone that's eligible to vote in that election

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 29**

1 is put onto the Express Poll.

2 Q. I want to make sure that I have this  
3 correct. The -- the registration database, for lack

4 of a better expression, tells the poll books what  
5 each voter access card should have on it, right?

6 A. No.

7 MS. BURWELL: Objection, Your Honor.

8 MR. BROWN: He said, no.

9 MS. BURWELL: First of all, it's leading; and second  
10 of all he hasn't defined some of those terms.

11 THE COURT: He said "No" anyway; okay? And -- and I  
12 -- I understand you're reading some questions you've got

13 and they're very scientific, but sometimes when you use  
14 scientific words, you may use one word and he may use

15 another word, and you may not be talking in the same  
16 language. And I think we're having some issues with that

17 this morning.

18 BY MR. BROWN:

19 Q. Help me out on the terminology, Mr. Barron.

20 What is the system called, the biggest system in the  
21 process?

22 A. The biggest system?

23 Q. Right. It's called the registration

24 system?

25 A. E-net, Electionet is the voter registration

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 30**

1 system.

2 Q. And that is maintained by who?

3 A. Well, it's maintained by the state.

4 Q. How does the Enet system inform -- does the  
5 Enet system at the state level inform the county as

6 to which voter should vote where?

7 A. Well, every -- every voter, based on their  
8 address, is given a ballot code and the only thing  
9 that's -- the only information that is put onto the  
10 voter access card is the -- the ballot code for that  
11 voter, so that -- because all the ballots, the  
12 different ballots for each precinct or during early

13 voting all the ballots are on there. The voter  
14 access card enables the voter to access his or her  
15 ballot.

16 Q. And to make sure I have my terminology  
17 straight, the voter access cards are inserted at  
18 Election Day into the Express Poll book's server;  
19 correct?

20 A. Yeah. It's not a server; it's just a  
21 standalone unit that -- the information is in the  
22 Express Poll, the card goes in, the poll worker looks  
23 up the voter, selects the name, that ballot code  
24 information is put on there, and what it does is it  
25 tells the DRE to access this ballot.

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 31**

1 Q. Thank you for that. And the Express Poll  
2 machine in turn gets its information from the state's  
3 Enet system; correct?

4 A. Not -- it's not why we're connected from  
5 it, but yeah, the source of information is from  
6 there.

7 Q. And how does -- it's not connected live;  
8 how does the information get from the Enet to the  
9 county?

10 A. We -- we get -- we get a card, like, a  
11 flash memory card that we -- we reproduce to put in  
12 the Express Polls, or the state reproduces all the  
13 cards. We put them into the Express Polls for each  
14 precinct.

15 Q. Are you aware of reports that the Enet  
16 system was vulnerable to hacking prior to the  
17 November 2018 election?

18 MR. TYSON: Your Honor, I'll object to that. I don't  
19 think there's a foundation about that, that any reports  
20 about that. If Mr. Brown wants to reference a specific  
21 report, I think he can, but --

22 THE COURT: It's the way that you phrase the  
23 question. You -- you make it as if it were a statement of  
24 fact. You can ask in that area, but you've got to  
25 inquire, not make these false statements that you keep

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 32**

1 making about things.

2 BY MR. BROWN:

3 Q. Right. Are you aware of any reports

4 related to hacking involving the Enet system?

5 A. I read that in the AJC.

6 Q. And after you read it in the AJC, did you  
7 follow up?

8 A. No.

9 Q. Did you investigate it at all?

10 A. No.

11 Q. Are you aware of anyone else investigating  
12 that?

13 A. No.

14 Q. Was it a -- was it a concern to you?

15 A. I didn't -- you know, when I read the  
16 story, I didn't know how seriously to take it. It

17 didn't -- I -- no.

18 Q. Were you aware -- or did the Secretary of  
19 State have an investigation?

20 A. I don't know.

21 Q. Just for the record, how many voting

22 machines does Fulton County have?

23 A. 3,108.

24 MR. BROWN: Let me take just a moment here. That's

25 all that I have at this time.



**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 33**

1 THE COURT: Questions? Thank you.

2 MS. BURWELL: Your Honor, did you want me to do all  
3 my questions now or just the ones related to what he's

4 been asked this morning?

5 THE COURT: You can ask him anything you want to ask  
6 him.

7 MS. BURWELL: I can ask as much as I'd like to ask?

8 THE COURT: Go ahead.

9 MS. BURWELL: Okay. Thank you.

10 THE COURT: We don't have a podium.

11 MS. BURWELL: Okay.

12 THE COURT: I know some of you are used to a podium.

13 I don't know that I like podiums, but is it -- we have no  
14 clerk, so you can use any of the clerk's area.

15 MS. BURWELL: Oh; okay? Well, maybe I can just --

16 THE COURT: Put it way over there on the end if you

17 want to be closer and seeing and not have the computer in  
18 the way. Yeah, that's a good place.

19 MS. BURWELL: Okay.

20 CROSS-EXAMINATION

21 OF RICHARD BARRON

22 BY MS. BURWELL:

23 Q. Mr. Barron, can you tell the court how long  
24 you've been involved in elections?  
25

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 34**

1 A. Since December of 1999.

2 Q. Okay. And can you tell the judge a little  
3 bit about your background with elections?

4 A. I've worked with Travis County elections in  
5 Austin, Texas, from 1999 to 2003. I also worked for

6 Sequoia Voting Systems from 2004 to 2005. In 2006, I  
7 worked for Hartman Civic, and then I went to work for

8 Williamson County in Brown -- Georgetown, Texas, from  
9 2007 to 2013, and then I came here.

10 Q. So, you've been with Fulton County since  
11 2013?

12 A. Yes.

13 Q. And so in connection with overseeing the  
14 election activities for the Fulton County Board of

15 Registration and Elections, are you required to  
16 follow state law?

17 A. Yes.

18 Q. And where do you find the state law that  
19 you're supposed to follow?

20 A. The Georgia election code and also there's  
21 an SED rule book.

22 Q. And what's the SED rule book?

23 A. It -- it -- it's -- from my understand,

24 it's basically an -- the state election board has

25 some rules that they interpret from the law, and I

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 35**

1 think they also make some -- some rules in addition  
2 to that.

3 Q. And you're required to follow those as  
4 well?

5 A. Yes.

6 Q. Does the state oversee all of your election  
7 activities?

8 MR. BROWN: Object, object, Your Honor. She's asking  
9 the witness what someone else does.

10 MS. BURWELL: May I respond, Your Honor?

11 THE COURT: Yes. We -- we -- we -- I think it's the  
12 way it's phrased. I -- I think you can ask the question.

13 Go ahead.

14 BY MS. BURWELL:

15 Q. Does anyone oversee the election activities  
16 that you undertake?

17 A. The state election board has the -- the  
18 ultimate authority over the boards, the -- the Fulton  
19 County Board of Registration and Elections.

20 Q. And are there -- are you personally or is  
21 the Board of Registration and Elections subject to

22 penalties for not following the code and rules?

23 A. Yes.

24 Q. Can you tell the Court why Fulton County  
25 uses the DRE-based voting system?

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 36**

1           A.    That is part of -- there -- there's a  
2   uniform voting law in Georgia, and every county uses  
3   the same equipment.  It's a state law.

4           Q.   Do you have a choice on whether or not to  
5   use that equipment?

6           A.   No.

7           Q.   Who owns the DRE machines that are used in  
8   Fulton County?

9           A.   70 to 80 percent of them were purchased by  
10   the state, and Fulton County purchased the other 20  
11   to 30 percent.

12          Q.   Can you tell the Court whether or not  
13   Fulton County has ever had any software issues with  
14   its DRE machines?

15          A.   No.

16          Q.   Are you aware of any viruses that have ever  
17   infiltrated a Fulton County DRE machine?

18          A.   No.

19          Q.   Let me ask you now the same questions about  
20   the poll book that you used.  Are you aware of any  
21   software issues with that poll book?

22          A.   No.

23          Q.   What about the viruses with that poll book?

24          A.   No.

25          Q.   And let me ask you now about the GEMS

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 37**

1 server, which is a -- yet a third component of the  
2 system; correct?

A. Yes.

3

4 Q. Are you -- has Fulton County ever had any  
5 software issues with the -- the GEM system?

6

A. No.

7

Q. And are you aware of any viruses with that

8

GEM system?

9

A. No.

10

11 Q. Are you aware -- is it -- are you aware of  
12 any external attacks that Fulton County has had on  
13 any of its machines?

14

A. No.

15

Q. Is it possible for there -- is -- is the

16

DRE machine hooked up to the Internet?

17

A. No.

18

19 Q. Is the DRE machine hooked up to anything  
20 external, the Web, or anything like that?

21

A. No.

22

23 Q. Now, are the DRE machines tested by Fulton  
24 County?

25

A. Yes.

26

Q. And do -- did you test the machines before

27

the November 6th election?

28

A. Yes.

29

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 38**

1           Q.    Is each DRE machine that's used in the  
2 election tested?

3           A.    Yes.

4           Q.    And are DRE machines that are used in the  
5 early voting tested as well?

6           A.    Yes.

7           Q.    Are any of the machines connected to each  
8 other?

9           A.    Only by electricity.

10          Q.    Okay.  So one DRE machine in a room isn't  
11 connected to another DRE machine in a room?

12          A.    No.

13          Q.    They're both potentially plugged into the  
14 electricity in the wall, but other than that --

15          A.    Correct.

16          Q.    Now, can you tell the judge in terms of the  
17 November 6th general election what you did to prepare  
18 for that election?

19          A.    Well, we began in August.  We have to -- we  
20 have to get the ballot ready.  We have to make sure  
21 we get all the information from all of the local  
22 candidates or from the municipalities that are having  
23 elections to the state, so that they can build a  
24 ballot.

25          We have to get all the -- the poll workers

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 39**

1 recruited, poll workers trained; polling places we  
2 have to make sure are -- are set.  
3 We have to get all of our workers set up for  
4 early voting. We have to get all the machines ready.  
5 We -- we also make sure we get all of the -- the --  
6 all of the voter registration applications processed  
7 that are timely, and there are lots of little, sundry  
8 duties that go along with all those.

9 Q. And those are the same -- the procedures  
10 you go through for every election; is that correct?

11 A. Correct.

12 Q. Now, can you tell the judge about ballot

13 styles and what that means?

14 A. Well, we had 115 ballot styles in -- in the  
15 November election. Those are based on -- on all the  
16 -- the precincts and the districts, all the different  
17 districts that -- that are within the county, from  
18 state senate districts to -- to city boundaries to  
19 House of Representative districts, all the -- all the  
20 political districts are taken into account, along  
21 with the precincts.

22 Q. So let me ask you about early voting. And  
23 can you explain to the judge how early voting works?

24 A. During early voting, all of the ballots are  
25 available at every polling place. You can vote

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 40**

1 anywhere during early voting.

2 Q. So what does that mean in terms of ballot  
3 styles?

4 A. Well, for our 370-plus precincts that we  
5 have, all of those are available with the 115

6 different ballot styles.

7 Q. How does that differ from Election Day?

8 A. On Election Day, the voters have to go to  
9 their -- their assigned precinct to vote. So those  
10 -- those precincts are what are available in each  
11 polling place.

12 Q. So on -- for early voting, if you live in  
13 Roswell, you can vote in Chattahoochee Hills, and  
14 they can pull up your ballot?

15 A. Correct.

16 Q. But on Election Day, you can only vote in  
17 Roswell?

18 A. Yes, at whatever assigned place in Roswell,  
19 yes.

20 Q. So during early voting, are there things  
21 that could occur that would cause a machine to say

22 "Cancel" on it?

23 A. Well, if it -- if they -- if the screen

24 comes up and there's a cancel sign on there, that --

25 that indicates that the ballot was created by the



**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 41**

1 Express Poll in -- in the disabled mode, for a  
2 disabled voter.

3 Q. Okay. So explain for the -- to the judge  
4 what that means?

5 A. There's -- the Express Poll has two  
6 different modes. You can have the regular mode where  
7 -- where the ballot comes up, or there's a -- there's  
8 also a mode for -- for disabled voters, because those  
9 voters, the ballot doesn't appear on the screen.

10 The only thing that appears is -- is a  
11 "canceled" button, so -- to cancel that out. Now if  
12 the voter goes up, he can put -- it's in the disabled  
13 mode, the Express Poll operator has to select the  
14 option to go back to regular mode.

15 If they don't, the next card they create is  
16 going to be in disabled mode.

17 Q. And so is that what makes it flash  
18 "Cancel"?

19 A. Yeah.

20 Q. Does that mean that there's a problem with  
21 the machine?

22 A. No.

23 Q. Okay. What does that mean?

24 A. The DRE's doing what it's told.

25 Q. So what happens to the voter in that

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 42**

1 instance, if it comes up and says "Cancel"?

2 A. Well, they would have to cancel the ballot  
3 and then go back to the Express Poll. They're

4 supposed to get -- all of our machines have a sign in  
5 them that say, "If there's anything wrong with your

6 ballot, whether it be that you've -- you think you  
7 have the wrong ballot, then you need to go get a poll

8 worker to help you."

9 Like to go back to the Express Poll and tell  
10 them or show them what's on the screen. From there a  
11 new card needs to be created that it's in the regular  
12 mode.

13 Q. Right. And it's not in disabled mode?

14 A. Correct.

15 Q. So then the voter can go and cast a ballot?

16 A. Yes.

17 Q. So the fact that it says -- that it had  
18 come up cancelled doesn't mean that the voter was  
19 unable to cast a vote --

20 A. Correct.

21 Q. -- on that day? Now let me ask you about

22 if an issue comes up with a DRE machine, and Mr.  
23 Brown asked you about something that happened at, I

24 believe, church. So you weren't at the church that

25 particular day, were you?

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 43**

1 A. No.

2 Q. So you don't have any first-hand knowledge  
3 about what particularly happened; correct?

4 A. Correct.

5 Q. But you listened to Ms. LeClerc's testimony  
6 about what she observed?

7 A. Yes.

8 Q. Can you tell the judge what the process is  
9 under those circumstances, if they're -- if this  
10 particular voter has an issue?

11 A. Well, we have a help desk that -- there're  
12 are different ways that a poll worker can contact the  
13 office. They should call the help desk, and then a  
14 ticket is created, and then a technician would be  
15 sent to the polling place.

16 In the meantime, if the poll worker has a  
17 concern about the machine, they -- they shut it down,  
18 as they did, and so -- and that's what they're  
19 supposed to do.

20 Q. Okay. Do you, as the director of  
21 elections, have any concerns about the reliability of  
22 the DRE machines that have been used in Fulton  
23 County?

24 A. No.

25 Q. Do you have any concern about any memory

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 44**

1 cards having ever been improperly accessed?

2 A. No.

3 Q. Can you tell the judge what the process is

4 for safety with respect to the memory cards?

5 A. All the -- all the machines will -- like,

6 in early voting, for example, all the machines are,  
7 after they're tested, all of them are sealed to seal

8 the equipment, the serial numbers are recorded, and  
9 the seal numbers are recorded, and those go out with  
10 -- with the poll workers.

11 Every day those -- those machines are -- the  
12 seals are broken, they're verified, they -- they seal  
13 them up again, and it goes -- the -- the process goes  
14 through the 19 days of early voting.

15 They're -- on Election Day, when we send those  
16 out, they're -- they're sealed after the vote --  
17 after, like, an accuracy is done. Those are also  
18 delivered out, and they -- they go to the polling  
19 place.

20 They're -- they are -- there is a recap sheet  
21 with it, and they have the serial numbers and the --  
22 the seal numbers are also recorded on there. The  
23 poll workers verify that those -- the seals are not  
24 broken, and if -- if one was to be broken, they're to  
25 contact our office and to let us know that the seal

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 45**

1 was -- is broken.

2 Q. So can you tell the judge what the process  
3 is for security with respect to the actual DRE

4 machines themselves? You told us about the cards  
5 being sealed and kept. What about the actual DRE

6 machines?

7 A. In our warehouse, they -- they are kept in  
8 a -- in a large warehouse. There's a keypad to get  
9 in. It's also -- the warehouse is alarmed, and we  
10 also have cameras in -- in the warehouse.

11 Q. Do you have chain-of-custody forms --

12 A. Yes.

13 Q. -- for the machines? Are those kept under  
14 lock and key?

15 A. Yes.

16 Q. And how are the machines delivered to the  
17 actual locations where voting occurs?

18 A. We have different either -- usually, it's  
19 either active-duty fire- -- firemen or officers or  
20 retired firemen or officers that -- police officers  
21 that do -- do the deliveries.

22 Q. And when those DRE machines are delivered,  
23 they have seals on them?

24 A. They have seals on them, and there's a  
25 cable through the door -- through the -- through the

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 46**

1 handles --

2 Q. Can you --

3 A. -- to make sure that they're all kept

4 together.

5 Q. Can you explain to the judge what the seal

6 looks like and what it's made out of and what's on  
7 it?

8 A. When they go out, it's a -- it's a metal  
9 seal, and it has -- it has a number on there that  
10 identifies that seal, and it's unique to that seal.

11 Q. And so what do poll workers do when they  
12 get the machines?

13 A. After they -- they will verify that the  
14 seal is -- that we recorded in the warehouse is the  
15 same that it is on that recap sheet, and then they  
16 break the seals to open the machines.

17 Q. Are you aware of any instance where a seal  
18 was broken or tampered with while at a polling  
19 location?

20 A. No.

21 Q. Now, once the election is over and the  
22 machines are returned to the warehouse, is there a  
23 seal on it when it's originally returned to the  
24 warehouse?

25 A. Yes.

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 47**

1 Q. And how long are you required to maintain  
2 that seal?

3 A. 30 days.

4 Q. So if -- if a machine is sealed, is there  
5 any way someone can access the door where the media  
6 cards are located?

7 A. No.

8 Q. Okay, why is that?

9 A. Well, they would have to break the seal to  
10 get in there, cut the cable, break the seal.

11 Q. Are you aware of that ever happening?

12 A. No. Also on the early voting machines,  
13 there's a metal plate that is put over the -- the  
14 doors on those. You'd have to crowbar those off, and  
15 it would break the unit.

16 Q. Can you now tell the judge about the  
17 security measures for the GEMS server?

18 A. That's password-protected. It's in the  
19 same warehouse with the -- with the DREs, so there's  
20 -- you have to have the access code to get in the  
21 door. There's also an alarm, and there are cameras  
22 in there.

23 MS. BURWELL: I have no further questions.

24 THE COURT: Yes, sir, Mr. Tyson. Mr. Lindsey?

25 MR. LINDSEY: I have some questions, Your Honor.

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 48**

1 I think you've alluded to it, Mr. Barron, but perhaps  
2 it would be a good idea to go ahead and explain.

3 Before I do that, my co-counsel has admonished  
4 me for asking a woman her age, so to be fair, sure that  
5 I'm not a sexist, what's your age?

6 THE WITNESS: 52.

7 MR. LINDSEY: All right. That's the last time I'm  
8 going to ask a woman her age.

9 THE COURT: I think everybody in here's younger than  
10 I am anyway, so don't worry about that. Go ahead.

11 MR. LINDSEY: Yes. All jokes aside, let's get to the  
12 serious part.

13 BY MR. LINDSEY:

14 Q. You've alluded to it a couple times, but

15 let's tell the judge a little more specifically.  
16 Prior to the election, for each machine, it is my

17 understanding that according to your testimony that  
18 you conduct what is called a logic and accuracy  
19 testing?

20 A. Yes.

21 Q. Explain to the judge exactly what that is?

22 A. We have a script that we -- we vote, and  
23 then once you input those votes, then you run the

24 tape and make sure that -- that the results match the  
25 script that was voted.



**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 49**

1 Q. Okay. And do you do that for each machine?

2 A. For each machine.

3 Q. Okay. And did all of the machines that

4 were used on November 6th, 2018 pass that test?

5 A. Yes.

6 MR. LINDSEY: No further questions.

7 THE COURT: Mr. --

8 MR. RUSSO: Briefly, I just -- only care about one

9 point.

10 BY MR. RUSSO:

11 Q. Mr. Barron, you indicated a script was run.  
12 Does that -- does that require someone actually

13 pushing the screen and voting it, or is that a  
14 software run on the computer?

15 A. No. We -- we actually input those manually  
16 to make sure that all the positions are recording

17 votes.

18 MR. RUSSO: Thank you.

19 THE COURT: Mr. Brown?

20 BY MR. BROWN:

21 Q. Mr. Barron, you were asked about a law

22 relating to -- that required you to use the DRE  
23 machines, right?

24 A. Um-hmm.

25 Q. And is it -- was it your understanding that

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 50**

1 the law does require you to use the DRE machines?

2 A. Yes.

3 Q. And are you aware of -- of a court opinion

4 that says --

5 THE COURT: Okay. You -- you -- you -- that's what

6 we're having trouble with, and I can see movement over  
7 here at this table. "Are you aware," you say that "are

8 you aware" as if it was a matter of fact. And it's fact

9 that's not in evidence, so rephrase the question.

10 BY MR. BROWN:

11 Q. Have you read the federal court decision,  
12 Curling vs. Kemp?

13 A. No.

14 Q. Are you -- what is the statute that says --

15 do -- do you know what the statute is that says you  
16 have to use DRE machines?

17 A. Not offhand.

18 Q. Are you -- are you -- do you know of any  
19 statute that says that?

20 A. I could -- if I had an election code, I  
21 could probably find it, but --

22 Q. And -- and you're -- what you're saying is  
23 that the Georgia code says that it requires the use

24 of DREs?

25 A. Yes, and that was clarified by the

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 51**

1 Secretary of State's office to all the counties  
2 leading up to the fall election cycle.

3 Q. Did that opinion change after a ruling by  
4 the federal court?

5 MR. LINDSEY: I'm going to objection to Mr. Brown.

6 He is an election official. He's got some general  
7 knowledge, perhaps, of the law --

8 THE COURT: Yeah, you're using -- see, you used the  
9 word "code," at one point. I -- whether he knows the  
10 difference between the code and the law, which are two  
11 different things, I don't know, but you're still -- you're  
12 still -- it's the way you're asking the questions, Mr.

13 Brown.

14 MR. BROWN: Your Honor, I -- the -- if I might just  
15 say one thing.

16 THE COURT: What?

17 MR. BROWN: They asked him, "What is your  
18 understanding of the law?"

19 THE COURT: But -- and you can ask him what -- you --  
20 you can test that, but you can ask, "Are you aware that --  
21 that rule ever changed?"

22 MR. BROWN: Are you aware --

23 THE COURT: That does the same thing. See where I'm  
24 coming from?

25 MR. BROWN: Yes.

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 52**

1 THE COURT: You -- you can get the information. It's  
2 just the way you phrase the question that's objectionable.  
3 BY MR. BROWN:

4 Q. Mr. Barron, are you aware if that rule was  
5 ever changed or interpreted differently as not

6 requiring --

7 A. No.

8 Q. -- the use of DREs? Okay. Were you, in  
9 your position as the director of elections for Fulton  
10 County, were you briefed on court orders from the  
11 federal court in the Curling case?

12 A. Yes.

13 Q. And did that briefing include telling you,  
14 quote, "But OCGA 21-2-383(b) does not require the use

15 of DREs," as defendant claims it does?

16 MS. BURWELL: Objection, Your Honor. First and

17 foremost, it appears that he's attempting to ask about a  
18 privileged communication.

19 THE COURT: It's not in -- it's -- it's -- I sustain

20 the objection.

21 BY MR. BROWN:

22 Q. Is it your working understanding, Mr.  
23 Barron, that the Georgia Code requires the use of

24 DREs?

25 MR. TYSON: Yeah, objection, on behalf of

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 53**

1 [inaudible].

2 THE COURT: Sustained.

BY MR. BROWN:

3

4 Q. Mr. Barron, you talked about secure  
5 facilities and about how to secure the facilities.

5

6 You mentioned the security with the GEMS server. Do  
7 you recall that?

7

8 A. Yes.

9 Q. And you weren't talking about the GEMS

10 database; you were talking about the actual GEMS

11 server; correct?

12 A. Correct.

12

13 Q. Okay. You -- you were describing how the  
14 machines are marked up, is that right? When they're

14

15 in -- after they're in use; correct?

16 A. At the poll, yes.

16

17 Q. And you testified about how the memory

18 cards are secured in a secure location; correct?

19 A. Yes.

19

20 Q. Those are the memory cards that have been  
21 used for years; correct?

21

22 A. Yes.

23 Q. You testified about the tickets that are

23

24 created as a result of complaints from -- well, let

24

25 me ask you this. The ticket system from your prior

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 54**

1 testimony, could you describe that for us in greater  
2 detail?

3 A. Well, a poller would call into our help  
4 desk on Election Day, and -- and then a ticket is  
5 created basically to -- if -- if we need to send a  
6 technician to that area. We have roaming technicians  
7 that oversee certain precincts, and then we can -- we  
8 can dispatch somebody.

9 Q. And where are those tickets saved?

10 A. We have -- we just have a database that  
11 keeps a log of our tickets.

12 Q. What is that database called?

13 A. Help desk. I don't think it has a name. I  
14 mean, it's just a help -- it's just our own internal  
15 help desk.

16 Q. Is that -- is that a record that you make  
17 available to the public?

18 A. It's -- I mean, I guess it would be  
19 available if -- if somebody put in an open records  
20 request, yes.

21 Q. And how many tickets were created for the  
22 November '18 election?

23 A. I don't know.

24 Q. Scores, hundreds?

25 A. I don't -- I don't think it was that many,

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 55**

1 but I don't know.

2 Q. And what about for the runoff?

3 A. I don't know.

4 MR. BROWN: Just one second. I'd like to take one  
5 minute.

6 THE COURT: Sure.

7 BY MR. BROWN:

8 Q. You testified that Fulton County has put  
9 the machines, the DRE machines through logic and  
10 accuracy tests?

11 A. Correct.

12 Q. You -- has Fulton County forensically

13 examined the machines?

14 A. No.

15 Q. And just for the record, has -- has Fulton  
16 County allowed plaintiffs access to the machines for

17 that testing?

18 MR. LINDSEY: Your Honor. Here we go. Once again,  
19 plaintiff's counsel is trying to bring back up discovery

20 issues that have arisen in this case that have all been  
21 brought before the judge on multiple occasions.

22 Judge in this court has ruled after hearing  
23 plaintiff's counsel giving him a reasonable opportunity to

24 argue, and the Court has overruled those objections, so

25 this entire line of questioning is found to be

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 56**

1 interrupting.

2 THE COURT: Mr. Brown?

3 MR. BROWN: Your Honor, this goes back to the statute

4 that I quoted in my opening statement --

5 THE COURT: Okay.

6 MR. BROWN: -- and that has to do with the --

7 THE COURT: The objection is sustained.

8 MR. BROWN: Thank you.

9 MS. BURWELL: If I could, Your Honor, just for one  
10 second?

11 THE COURT: Mm-hmm.

12 BY MS. BURWELL:

13 Q. Mr. Barron, I'm going to show you  
14 OCGA 21-2-300. Is that what you were referring to

15 earlier about being required to use the state-  
16 mandated DRE machines?

17 A. You said 302? Or 300?

18 Q. 300.

19 MR. BROWN: Excuse me, excuse me, Your Honor. I've

20 just -- in the here --

21 THE COURT: Let me -- let me say this. You can all

22 read the law to me in closing.

23 MS. BURWELL: Okay. All right.

24 THE COURT: You don't -- don't -- don't make a lay

25 witness a lawyer.



**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 57**

1 MS. BURWELL: Okay.

2 THE COURT: I'm sure he doesn't want to be one.

BY MS. BURWELL:

3

4 Q. Last thing, Mr. Barron. In Fulton County  
5 you didn't receive any complaints of someone saying

6

7 that a race, specifically the lieutenant governor  
8 race didn't appear on their ballot?

9

10 A. I don't recall that, no.

11 MS. BURWELL: Thank you.

12 MR. LINDSEY: For a follow-up to that.

13 THE COURT: Right.

BY MR. LINDSEY:

14

15 Q. If there had been something as serious as  
16 that, do you believe that you would have been alerted

17

18 to it?

19 A. Yes.

20

21 MR. BROWN: Objection, Your Honor. That calls for  
22 speculation as to reading the minds of other people who  
23 might --

24

25 MR. LINDSEY: He's -- he's ahead --

THE COURT: Sustained.

26

27 MR. LINDSEY: -- of the office now.

28 THE COURT: Sir, I understand. "Did you get one" is

29

30 enough?

31

32 BY MR. LINDSEY:

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 58**

1 Q. Did you ever get one that day that a race  
2 was not on, that particularly the lieutenant  
3 governor's race was not on the ballot?

4 A. No.  
5 MR. LINDSEY: Thank you.

6 MR. BROWN: No further questions, Mr. Barron.  
7 THE COURT: Okay. You may go now. Thank you.

8 THE WITNESS: Thanks.

9 MR. BROWN: Your Honor, at this point we have no  
10 further witnesses, but I would like to make one  
11 evidentiary argument that may be well. And it is to renew  
12 our request for the admission of the National Academy of  
13 Sciences report. And let me just very briefly describe  
14 the law on that.

15 The -- when it was tendered, I made the argument that  
16 -- that the basis of it being admissible by experts is  
17 principally -- it's hearsay, but the -- but the law  
18 requires is that --

19 And this is what the law says, and I'm quoting 24-7-  
20 703, "Such facts or data that are otherwise inadmissible  
21 shall not be disclosed to the jury by the proponent of the  
22 opinion or inference unless the court determines that the  
23 probative value in assisting the jury to evaluate the  
24 expert's opinion substantially outweighs their prejudicial  
25 effect."

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.****Transcript of Trial Proceedings on 01/18/2019****Page 59**

1 And so I would ask, Your Honor, to -- to allow the  
2 opinion of -- to allow the National Academy of Science's  
3 report, because their probative value greatly outweighs  
4 the prejudicial effect, and I would also, at this point,  
5 note that the report is independently admissible under  
6 OCGA 24-7-803 (8)(C), which is the public records and  
7 reports exception of hearsay.

8 And I would cite the case of Chrysler v. Walden, 339  
9 Ga. App. In that case, the court allowed the firm  
10 allowance of a report of the National Highway Traffic  
11 Safety Administration opposite defects investigation about  
12 a recall of a particular defective product.

13 We think that case is right on point. We believe,  
14 Your Honor, that -- I understand that Your Honor has not  
15 reviewed this evidence because it wasn't admitted in the  
16 evidence.

17 THE COURT: Well, I thought it was unfair to  
18 everybody for me to start reading stuff people were  
19 sending me to read. There was going to be evidence when  
20 there was no -- I didn't know whether it was admissible or  
21 not, so I didn't --

22 MR. BROWN: We would urge Your Honor to consider  
23 reading it and to conclude that, since a consensus report  
24 from the National Academy of Science is the best that this  
25 country has.

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 60**

1           And it's right on point about securing elections,  
2       which is exactly what this case is about, it would be  
3       helpful to the triers of fact to have the best evidence  
4       that this country could ever have about the issue in this  
5       case and that is the security of this machine.

6           MS. BURWELL: Your Honor, I would just note that this  
7       is not -- does not appear to be a complete copy. It looks  
8       like the -- the cover page says -- looks like the document  
9       is supposed to be 180 pages. This appears to be maybe the  
10      first 8 pages of that document, because it begins at page  
11      8 in here, but it's not a complete --  
12           You can see that the -- the last paragraph continues  
13      beyond this page, so it is not -- it's not even a complete  
14      copy.

15          MR. LINDSEY: Your Honor, admittedly I'm having to  
16      deal with what's on the line. But according to the  
17      National Academy of Sciences on the webpage, the National  
18      Academy of Sciences is not a public entity, not a  
19      governmental entity.

20           It is a private, nonprofit organization, therefore  
21      doesn't fit within the exception that gentleman has -- has  
22      alluded to. The expert has already stated that he  
23      reviewed it, allowed it when he was giving his opinion.  
24      It goes back once again to hearsay.

25           It's also irrelevant, Your Honor, because the

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 61**

1 question here is whether or not the system that Georgia  
2 has is the most secure possible, but whether or not in  
3 this particular case a breach actually occurred, and to  
4 the extent that the results of the election weren't valid.  
5 That's the question, and --

6 THE COURT: Mr. Tyson? Sorry.

7 MR. BROWN: -- the NAS report, that's something  
8 that's better argued downtown under the goal of the  
9 academy.

10 MR. TYSON: And, Your Honor, we do agree with the  
11 prior statements, and just would add that, to my  
12 knowledge, that there is nothing specific about the  
13 Diebold Georgia voting machines in this report. It's  
14 about DREs generally.

15 As Mr. Lindsey said, the expert has already relied  
16 upon this in testifying yesterday, and unless there is  
17 something specific about this election, I don't see that  
18 there's any relevance for the Court to consider to admit  
19 it in evidence.

20 THE COURT: Mr. Brown?

21 MR. BROWN: First, Your Honor, just for the record,  
22 as Your Honor is aware from the evidence, the -- the  
23 evidence is entirely, entirely contrary to what counsel  
24 says.

25 THE COURT: No, it's not. You see, you -- and I

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 62**

1     respect you, because you're an advocate. And you  
2     absolutely believe your side of the case, and a lawyer is  
3     supposed to do that. But that doesn't make it all right.

4     That's your view of it.  
5         It's not -- yeah, I have to look at both sides. So

6     -- so that's really got nothing to do with it. I've got  
7     -- let me say -- say what I -- go ahead and finish

8     arguing, because I very much know what I'm going to do on  
9     it.

10           MR. BROWN: The evidence as we perceive it to be,  
11     Your Honor, is -- and we're just simply not aware of the  
12     contrary evidence, is that the defects are national, and  
13     there's no difference, material difference between it in  
14     Georgia, and we're not aware of any material testimony.

15     Therefore the unanswered court decision, I would instruct  
16     it to leave it up to Your Honor [inaudible].

17           THE COURT: Okay. I -- I find it's not admissible.  
18     It doesn't come in under public record, because it's not  
19     public, okay? Number two, it was something that he relied  
20     on in giving his opinion, and I've had his opinion. His  
21     opinion is these -- if you listen to him, these pretty  
22     much useless machines. I understand all that, and I'm not  
23     going to read something that's hearsay.

24           MR. BROWN: Thank you, Your Honor.

25           THE COURT: Okay? I mean, I understood what he was

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 63**

1 saying.

2 MR. BROWN: Thank you, Your Honor. At this time, we  
3 would also like to renew our demand for a jury. And the

4 reason why I'm renewing the demand, Your Honor, is that  
5 there is -- there is case law that may not be the best law

6 around, but it suggests that if you don't continue the  
7 demand --

8 THE COURT: I -- so we already in this hearing,  
9 already in this trial, I have ruled. I'm one of these  
10 judges, I'm afraid, who rules, you know. I make pretty  
11 clear rulings, as we pointed out yesterday. I'm not an  
12 English major, so my stuff comes out ching-ching-ching.

13 I've ruled. Don't run in the face of it, okay?

14 MR. BROWN: Thank you, Your Honor.

15 THE COURT: Thank you. Do you rest?

16 MR. BROWN: We do.

17 THE COURT: Okay. Let me do this. Let me take ten  
18 minutes, and then we'll hear from the other side.

19 MR. LINDSEY: Thank you, Your Honor.

20 MR. BROWN: Thank you.

21

22 [Off the record at 10:16 a.m., and back on the record  
23 at 10:21 a.m.]

24

25

BALIFF: Please take a seat. Court comes to order.

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 64**

1 MALE: Oh, sorry.

2 THE COURT: Okay. Which defendant is to go first?  
Oh, you have a motion?

3  
4 MS. BURWELL: Yes.

THE COURT: Okay.

5

6 MS. BURWELL: On behalf of Fulton County, Your Honor,  
I will move for an involuntary dismissal pursuant to 911

7

8 41(b) on the grounds that this court as the trier of fact  
9 is allowed to adjudicate a motion to dismiss at the close  
10 of the plaintiff's case.

11 And that is because the court is the finder of fact  
as well as the determiner of the law and the cases are

12

13 clear and I'd cite the court to Chalk v. Poletto 346 Ga.  
App 491 which is a 2018 case as well as Smith v. Georgia

14

15 Kaolin Company, Inc., 269 Georgia 475 both of which  
provide that a dismissal in a non-jury matter under

16

17 91141(b) does not require the court to construe the

18 evidence most favorably for the nonliving plaintiff. And  
that again is because the court determines the facts as

19

20 well as the law.

And in the instant case, the petitioner's under have

21

22 filed an election contest under 2125-22, Sections 1 and 3;  
and Section 1 requires the plaintiffs to have shown

23

24 misconduct, fraud, or irregularity in the election, by an

25 election official sufficient to change, replace, and doubt



**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 65**

1 the result.

2 Instead what these petitioners are alleging, is that  
3 just the DRE machines themselves, nothing that an election

4 official did, but just the machines themselves are -- they  
5 don't -- they don't care for the machines and think that

6 they're vulnerable.

7 Under section 2125-22(3), they had to show that

8 illegal votes were received or illegal votes rejected,  
9 sufficient to change or place in doubt the results. And  
10 there's been no evidence at all that there have been the  
11 rejection, the receipt of illegal votes, or the rejection  
12 of votes at the polls sufficient to change or place in the

13 result. They brought in one woman who said she didn't see  
14 it, but then she was able to vote for that, which was Ms.

15 Thomas -- I think her name was -- this morning.

16 And the only other information was information from a

17 poll worker who said she got second hand information that  
18 someone wasn't able to vote, but that is one vote at issue  
19 and there were over a 100,000 vote margin between the two

20 candidates.

21 So there is not sufficient information back. There

22 was no information in the record which would allow this  
23 court to find that there were legal votes rejected,

24 sufficient to change or place in doubt the result.

25 There's been no evidence of impropriety that led to this

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 66**

1 under-vote. There's no evidence of any sort of tampering  
2 that led to this under-vote.

3 And instead what they have done is they have said  
4 there's a purely mathematical computation and they believe  
5 that a four percent under-vote for the Lieutenant

6 Governor's race is inappropriate.

7 And there is no evidence in the record about how or  
8 why individuals choose not to vote for Lieutenant  
9 Governor's race. But the one thing we do know is that  
10 even based on the information they provided in every  
11 single election, there are under-votes. Every single  
12 election.

13 The only difference here is that they complain that  
14 they believe that the amount of four percent is too large.

15 But again, there was no tie in between why there's an  
16 under-vote and any sort of impropriety on behalf of an  
17 election official or any legal votes that have been  
18 rejected. Thank you.

19 MR. TYSON: Your Honor -- Your Honor? Yeah. Your  
20 Honor, just to briefly Gwinnett County Board of  
21 Registrations in elections joins in Fulton County's motion  
22 requesting that this be treated as an adjudication on the  
23 merits which is allowed under 41(b) just to echo what Ms.  
24 Burwell has raised the evidence before the court for the  
25 reports that is that the Lieutenant Governor's race

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 67**

1 appeared on every ballot in the state according to the  
2 base precinct report with races.  
3 That the -- all the cards were counted according to  
4 the TS report and that there are a number of possible  
5 reasons as the various witnesses testified about why an  
6 under-vote may occur. It have been ballot design with the  
7 lack of the US Senate race, the lack of a third party,  
8 there were a number of additional write-in candidates.  
9 Any of those issues could go to why the under-votes are  
10 there, including the most important one, voters chose not  
11 to vote at the race as was their option.  
12 There is no evidence in the record that all -- that  
13 any of those have been disproven as a possible basis. And  
14 as a result, Mr. Brown and the plaintiff's elections  
15 contest and must fail the election is presumed valid and  
16 there was no evidence of irregularities sufficient to  
17 place the results in doubt.  
18 To the contrary, there is evidence that the results  
19 should be placed, should be given the presumption that  
20 it's favored because of the evidence in the record. And  
21 as Ms. Burwell indicated, there is no indication that the  
22 number of illegal votes cast or legal votes rejected was  
23 anywhere near the margin of victory in this case, 123,000  
24 votes. So we fully join in Fulton's motion.

25 MR. LINDSEY: Your Honor, first off, on behalf of the

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 68**

1 Lieutenant Governor Jeff Thompkin [ph] we will adopt the  
2 argument raised by both attorneys for Fulton County and  
3 Gwinnett County. And simply once again, I want to read it  
4 off again, into Hart v. Crawford, which I read at the  
5 beginning, 20 Ga. 7, 1998 decision which clearly lays out  
6 the fact that [inaudible] with the extraordinary, drastic  
7 -- I believe the word used by the board is drastic. There  
8 must be clear evidence of some kind of issue in terms of  
9 either malicious or negligent kind of issue that created  
10 the problem. The fact of the matter is --

11 THE COURT: Quick, which case are you referring to?  
12 Sorry to interrupt you.

13 MR. LINDSEY: Hart [ph].  
14 THE COURT: Hart.

15 MR. LINDSEY: Versus Crawford, 270 Ga. 7, 1998.  
16 THE COURT: I got it. Okay.

17 MR. LINDSEY: In regards to the evidence that you've  
18 heard that the plaintiff's expert himself admitted that he  
19 was not familiar with the particularities of this race in  
20 terms of what was going on in this race, but simply doing  
21 so by doing mathematical formulations. He admitted that  
22 he has no evidence of any kind of malware or malicious  
23 conduct by any individual, would have led to the under  
24 voting that they have cited from the testimony of the  
25 plaintiff's own witnesses.

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.****Transcript of Trial Proceedings on 01/18/2019****Page 69**

1           That was never rebutted by any other witness of the  
2    plaintiff. The -- there -- there -- there are ample  
3    reasons why there was an under-vote including the fact  
4    that we had a high number of new voters, voter confusion  
5    in terms of the -- as a result of the layout of the ballot  
6    Governor, Lieutenant Governor. Given the history of  
7    Governors that Lieutenant Governors of other states  
8    running as a ticket. And that, that is a reasonable  
9    reason for why there was an under-vote, in addition to  
10   other evidence that was elicited from the plaintiff's on  
11   their reports.  
12        There's also testimony, I think this is extremely  
13   important. a lot of plaintiff's expert testify as to what  
14   might have, could have, should have happened. The  
15   undisputed testimony from both the Secretary of State and  
16   from the Fulton County election official from the  
17   plaintiffs' themselves called on direct, testified as to  
18   the safe guards that are taken both before an election and  
19   on election day to ensure that the system is operating  
20   correctly in terms of the voter being able to cast a vote  
21   for the candidate of their choice and that vote being  
22   accurately reported by the state; that the testimony has  
23   not been contradicted by anyone in terms of the safeguards  
24   that were put in place.  
25        Nor has -- while the plaintiff's expert talked about

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 70**

1 systems that are on the web, we have undisputed testimony  
2 that the system that deals with the actual recording --  
3 accurate recording of a voters vote all the way up to the  
4 counting of that vote is within a closed system that is  
5 not susceptible to the hacking at the plaintiff's expert  
6 has outlined as part of their concerns. That testimony is  
7 uncontroverted.

8 So for those reasons as well as the reasons set forth  
9 by my colleagues from Gwinnett and Fulton County, we  
10 actually -- we also make this much at this time.

11 THE COURT: If -- I'm going to hear from Mr. Brown  
12 but before I do, do you have 911 with you?

13 MS. BURWELL: Okay.

14 THE COURT: Everybody -- everybody's only got the --  
15 okay. I don't have a computer and I'm one of those -- I  
16 just have to go read it myself because I had forgotten  
17 that you could do that. So if 911-41?

18 MS. BURWELL: Yes.

19 MR. LINDSEY: And Your Honor, since you don't have a  
20 computer, would you like the Hart decision that I --  
21 THE COURT: I've got it.

22 MR. LINDSEY: Okay.

23 THE COURT: I did some work.

24 MR. LINDSEY: Thank you, Your Honor.

25 THE COURT: I won't say how much. 911? Let me look

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 71**

1 at -- here it is. Oh, I got one of these somewhere, let  
2 me see 41. Let me see. Let me see. What subsection?

MS. BURWELL: Forty-one (b).

3

4 THE COURT: B. Okay. Go ahead, Mr. Brown.

MR. BROWN: Your Honor, the evidence established

5

6 first a national consensus on the [inaudible] are highly  
7 vulnerable and shouldn't be used. This -- there was no

7

8 contrary evidence as to national consensus, either by

9 governmental agencies or assigned this.

10 So the background is undisputed, and that is that

11 these machines for vulnerable to attack and that they  
12 should not be used. Second, there was a lot of evidence

12

13 about whether Georgia's particular DREs are worse than the  
14 national decrepitude because of the way George has not

14

15 maintained these machines over the last couple of years.

Our position is that Georgia has not done set on --

16

17 that these machines are worse even than the national

18 average, which worse than general and in general -- even  
19 if it were as good as general, they should not be used.

19

20 We believe Georgia's are much worse than even the bad ones  
21 in other states that should not be used. And we had

21

22 substantial evidence that is the case. At all -- since --  
23 since they're defective anyway, I don't want to spend too

23

24 much time on the evidence that they're very, very

25 effective.

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.****Transcript of Trial Proceedings on 01/18/2019****Page 72**

1 But these are -- and I want to go through the  
2 evidence very quickly. The -- Michael Barnes testified  
3 yesterday in response to my questions about the compromise  
4 of the election server, that they had replaced one partial  
5 -- they replaced one piece of their system we established  
6 today from Mr. Barren that the other components were not  
7 replaced and they were not disaffected. And so we believe  
8 that Georgia's system is much more vulnerable than the  
9 systems described by the national campus [ph] -- described  
10 by our expert, recounted by our expert.

11 That the unanimous opinion of defense agencies, the  
12 scholars and the scientists, that they should not be used  
13 and that Georgia's is even more vulnerable. And that is  
14 important because they're vulnerable that it naturally  
15 increases the chances of what we're alleging in this  
16 election actually happened.

17 And then that was also the opinion of our expert or  
18 at least un-rebutted yet. The other evidence that we have  
19 is the evidence that the results in this case, if you  
20 compare the electronics and the paper ballot suggest that  
21 there's something about the electronic that was causing  
22 the different vote. If Your Honor -- as the defendants'  
23 positions' has evolved, that seems to be where they're  
24 headed also.

25 There is as -- as the evidence has shown, there is a



**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.****Transcript of Trial Proceedings on 01/18/2019****Page 73**

1     microscopic chance that the results on paper are different  
2     than the results on the voting machines because of voter  
3     choice or chance. Instead, two different scenarios have  
4     been presented to you. One is that it is caused by  
5     malware or misprogramming or it's a sham [ph].

6             The other, and that evidence was presented by our  
7     expert, it was informed by the national consensus that  
8     something like that was likely and that the particular  
9     results and evidence about voters experiences were  
10    telltale signs that there is a system problem within --  
11    that the -- with the computers that was causing this to  
12    happen.

13            What is the other evidence? The way that -- that --  
14    that we view the case, Your Honor, is that for this  
15    freakish result to happen and I believe the evidence is  
16    one in 10,000, for that to happen, on the one hand, it  
17    could have been this thoroughly discredited, highly  
18    vulnerable election system did not function properly.  
19    That's one option.

20            The other option is the one presented -- suggested by  
21    Mr. Lindsey in his questions of Mr. Barnes yesterday and  
22    that is the -- that the voters thought that there was a  
23    tick. That the -- that for some reason they looked at the  
24    screen and they thought, oh, we only need to vote for the  
25    Republican ticket and the Democratic ticket.

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.****Transcript of Trial Proceedings on 01/18/2019****Page 74**

1           There is, apart from the question by Mr. Lindsey and  
2     the answer by Mr. Barnes, there's no evidence supporting  
3     that speculation. Your Honor remarked that we're more

4     concerned with why people did this. There -- the -- and --  
5     -- and that was the basis -- one of the basis for not

6     allowing some of our testimony.

7           The -- the here, there is no testimony that any voter

8     did not vote for the Lieutenant Governor ticket because

9     they thought it was -- the Lieutenant Governor because

10    they thought it was the ticket. Instead -- and they

11    didn't even have an expert -- they don't even have an  
12    expert. They don't even try to get an expert.

13           THE COURT: Well, they haven't got that far yet. But  
14    the issue -- the issue as we're all --

15           MR. BROWN: We're all. So they have -- just the  
16    nature of, well, we can throw this idea out. Maybe this

17    is an explanation for it. We don't have any evidence.

18    It's not particularly plausible that a voter would do that  
19    particularly as many times and it's not based upon any

20    evidence whatsoever.

21           It really is speculation. But the defendants rule

22    that the defendants would have Your Honor adopt, is that  
23    if you challenge the result of a statewide election in

24    Georgia that it's done on electronic machine, is that you

25    have to find some bad code. That is what they would have

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 75**

1 Your Honor rule. We got to find the code. There's no bad  
2 code, there's no misprogramming, then the plaintiff will  
3 lose. But we're not going to let you find that bad code  
4 ever.

5 And so the rule that the defendants want, the  
6 Secretary of State wants would insulate decisions in  
7 Georgia -- would insulate elections on electronic  
8 equipment in Georgia from any judicial review because  
9 you've got approved bad code, but you're not going to be  
10 able to look at it to find it.

11 And we believe that the combination of that rule and  
12 the inability to discover it is inconsistent with the

13 statute, which was written by the legislature to allow  
14 petitioners to show that -- to allow that them to show,

15 and they have the court decide that at the election, so  
16 the fact that you can -- we believe a better reading of

17 the law is that once the petitioner has made a prima facie  
18 showing of the likelihood that the machines caused the  
19 difference, and here there's -- we have proven that Your

20 Honor, we believe to a very high degree.

21 There -- the evidence is that there's a 99.95 percent  
22 chance that there was something about the machines that  
23 caused the election results and we believe that in that  
24 event, that we have survived and that we -- that the  
25 election should be overturned [inaudible, paper shuffling]

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 76**

1 then in additional, that Your Honor exercise your  
2 discretion to call another hearing for the code to be --  
3 after the code be evaluated.

4 THE COURT: Anything -- any -- any response to that?  
5 MR. LINDSEY: Yes. Very briefly, Your Honor. The

6 fact of the matter is that tests were conducted, this is  
7 uncontroversial. As a matter of fact, the bi-witnesses  
8 that the plaintiff chose to put on this stand, tests were  
9 conducted that would have revealed if malware was in  
10 place.

11 Tests were conducted prior to the election. Most  
12 importantly, tests were conducted on the day of the  
13 election to see whether or not there was any kind of  
14 systemic problem with this -- with the voting system.

15 And that was great details as to what that costed, in  
16 which they had cameras on one individual actually live,  
17 making sure -- making choices and then they had a parallel  
18 system and then seeing whether or not there was any kind  
19 of deviation. That testimony is uncontroverted that these  
20 tests were done and the testimony is also uncontroverted  
21 that if a malware had existed it would have come out at  
22 that point.

23 It was also uncontroverted testimony today regarding  
24 the specific inspections that are done on each machine  
25 prior to the election to make sure that the machines are

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.****Transcript of Trial Proceedings on 01/18/2019****Page 77**

1 operating correctly and that if a voter cast his vote for  
2 individual A, it was going to be recorded as A. That  
3 testimony is uncontroverted. So we actually do have, here  
4 in Georgia, tests to make sure that when Edward Lindsey  
5 cast a vote for Mr. Brown, that that's going to be  
6 properly recorded by the Secretary of State, certified  
7 correctly.

8 There is no controversy to that. There's no --  
9 there's no evidence to the contrary that these tests took  
10 place or what the results were. And as to the other  
11 matters regarding if there was no malware, what was the  
12 cause, we have presented -- by the plaintiff through the -  
13 - with their own expert, with their own witnesses on cross  
14 examination have admitted that there were plausible other  
15 explanations. For that reason, Your Honor -- we believe  
16 that this motion be passed.

17 THE COURT: Any -- anything else?

18 MR. TYSON: Yeah. Can I just briefly, again, for  
19 what Mr. Brown explained, there's no prima facie showing  
20 here at all as far as that all we can say is that they  
21 might be vulnerable, they might be -- there might be a  
22 problem, there might be an issue. Georgia Supreme Court  
23 is clear in Middleton v. Smith, 273 GA. 202 in 2000 which  
24 you cannot overturn an election on the basis of mere  
25 speculation. And that's what we have here. We have no

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 78**

1 evidence of additional [ph] votes. We have no evidence of  
2 an irregularity happening.

3 Mr. Brown has also conveniently chosen to ignore the  
4 fact that the ballot design that in 2018 you did not have  
5 a U.S. Senate race on the elect- -- on the ballot and  
6 that's a deviation from a number of our past Governor's  
7 elections.

8 And so when a voter was presented with that  
9 electronic machine, they saw the first two races instead  
10 of being U.S. Senate and Governor, they were Governor and  
11 Lieutenant Governor, which was a change from past years,  
12 which is also a very reasonable explanation for the  
13 potential country vote.

14 So at the end of the day, the plaintiffs are left  
15 with, we think maybe something might have happened and the  
16 Georgia Supreme Court is clear that mere speculation  
17 cannot be the basis for overturning an election.

18 THE COURT: Anything further from you?

19 MS. BURWELL: Nothing further.

20 THE COURT: Okay. I had -- I guess I'm used to  
21 trying stuff to jury. I hadn't realized that I was in

22 this position.

23 And 91141(b) says, after the plaintiff in an action  
24 tried by the court without a jury has completed the  
25 presentation of his evidence, the defendant without

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 79**

1 waiving his right to offer evidence in the event the  
2 motion is not granted, may move for dismissal on the  
3 grounds at upon the facts and the law, the plaintiff has

4 shown note right to relief.  
5 Taking everything the plaintiffs have said, your

6 attack is on the whole system and I respect that. And  
7 there is authority that says that scientific authority

8 that says that DRE -- DRE system is terrible and all those  
9 kinds of things. I'm very aware of that.

10 But what I'm here on is one race. Just one race.

11 You haven't sued the state to get rid of the system; okay?  
12 That's one thing. I wouldn't be in this position if

13 that's where we were, but we're not, we're looking at one  
14 race.

15 And you brought it on 212522 one and three. There  
16 was absolutely nothing to support one. And then let me

17 look at three. There was no illegal votes received.

18 There's no legal votes rejected and in this race in the  
19 evidence. Now, I understand you've got the under-vote

20 issue. I'll get to that.

21 The law is very clear that it's presumed there is a

22 legal presumption that the election returns of ballot;  
23 okay? There's the presumption in ballot. The plaintiff

24 has the burden of showing an irregularity or illegality

25 sufficient to change all place in doubt the result of

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 80**

1 election; okay? The result of this particular election,  
2 not all of them, not the DRE, not any of that. One -- the  
3 one thing. It's a narrow issue.

4 It says the setting aside of an election, I'm reading  
5 the law, of an election in which the people have chosen

6 their representative is a drastic remedy that should not  
7 be undertaken lightly, but instead should be reserved for

8 cases in which a person challenging an election has  
9 clearly established a violation of election's procedures  
10 and has demonstrated the violation has placed the result  
11 of the election in doubt. There is no -- the only thing  
12 you've got is the under -- is the under-vote and the --

13 144 votes in Winterville; okay?

14 If the numbers should have been equal and there is no  
15 evidence to show of the under-vote, but let's assume  
16 somehow that was an error and there should have been 31  
17 more thousand votes.

18 And let's assume that the one precinct in Winterville  
19 was 144 votes, should all have been given to Ms. Amico

20 and we'll take the 31,000 as all being given to Ms.  
21 Amico. We're still nowhere near -- the numbers do not --

22 there is -- it's not even close.

23 There is absolutely no evidence of the number of  
24 votes sufficient to overcome. And there is no evidence  
25 that this system didn't work during this election.



**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 81**

1           So on that, I'm going to grant the motion to dismiss.

2           MR. BROWN: Your Honor, with respect, the evidence  
3           with the --

4           THE COURT: Sir, I've ruled. This is one thing you  
5           haven't handled well with me because I rule. And now some

6           judges, you can keep talking and they change their mind.  
7           Old Judge Raven [ph] was that way. As long as you kept

8           talking, he would eventually change his mind. I don't do  
9           that; okay?

10          MR. BROWN: [inaudible]

11          THE COURT: So let's not. I've ruled, I'm done.  
12          I've just got to clean my desk a minute.

13          MR. BROWN: We --

14          THE COURT: This is your book.

15          MR. BROWN: Would you like an discussion about the  
16          number you cited?

17          THE COURT: No, sir.

18          MR. BROWN: Okay.

19          THE COURT: Nothing.

20          MR. TYSON: Thank you, Your Honor.

21          THE COURT: Thank you.

22          MR. BROWN: Thank you, Your Honor, thank you for your  
23          time.

24          THE COURT: It's going to take a minute, I have a  
25          briefcase; you all just go. I've got to go way back in

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 82**

1 the other building.

2 MR. LINDSEY: I -- you have a briefcase Your Honor --

3

4 [Whereupon, the hearing was concluded at 10:49 a.m.]

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**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 83**

1 CERTIFICATE

2 STATE OF GEORGIA ]

3  
4 ] SS.  
5 COUNTY OF DOUGLAS ]

6 I, PRISCILLA GARCIA, A COURT REPORTER IN THE STATE OF  
7  
8 GEORGIA, DO HEREBY STATE THAT THE FOREGOING IS A TRUE AND  
9 ACCURATE TRANSCRIPT AS TAKEN DOWN BY ME AT THE TIME,  
10 PLACE, AND THE DATE HEREINBEFORE SET FORTH.

11 I DO FURTHER STATE THAT I AM NEITHER A RELATIVE NOR  
12 EMPLOYEE NOR ATTORNEY NOR COUNSEL OF ANY OF THE PARTIES TO  
13 THIS ACTION, AND THAT I AM NEITHER A RELATIVE NOR EMPLOYEE  
14 OF SUCH ATTORNEY OR COUNSEL, AND THAT I AM NOT FINANCIALLY  
15 INTERESTED IN THIS ACTION.

16 WITNESS MY HAND IN THE CITY OF DOUGLASVILLE, COUNTY  
17 OF DOUGLAS, STATE OF GEORGIA, ON THIS 28TH DAY OF JANUARY  
18 2019.

19 BY: Priscilla Garcia

20 PRISCILLA GARCIA, COURT REPORTER  
21 NOTARY PUBLIC, STATE OF GEORGIA

22 COMMISSION NO.: W-00379933  
23 COMMISSION EXPIRES: 08/14/2022

24 CERTIFICATION NO.: 5503-2677-8304-9216

25 LICENSE EXPIRES: 04/01/2019

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019**

**Page 84**

1

2

3 I, Chris Naaden, a transcriber, hereby declare  
4 under penalty of perjury that to the best of my  
5 ability the above 82 pages contain a full, true and  
6 correct transcription of the tape-recording that I  
7 received regarding the event listed on the caption on  
8 page 1.

9

10 I further declare that I have no interest in the  
11 event of the action.

12

13 January 28, 2019

14



15

16 Chris Naaden

17

18

19

20 (Transcript of Trial Proceedings)

21

22

23

24

25

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

Transcript of Trial Proceedings on 01/18/2019

Index: (8)(C)..9:04

		65:6	<b>491</b> 64:13
(	2		
		212522 79:15	
(8) (C) 59:6	20 10:11	24-7- 58:18	<b>5</b>
(b) 71:2	36:10 68:4	24-7-803	<b>52</b> 48:6
	2000 77:22	59:6	
-	2003 34:4	269 64:15	<b>6</b>
--is 54:15	2004 34:6	270 68:15	<b>62</b> 15:6
	2005 34:6	273 77:22	<b>6th</b> 37:24
1	2006 34:6		38:17 49:4
1 64:22	2007 34:9	<b>3</b>	
10,000 73:15	2013 34:9,	3 64:22	<b>7</b>
100,000	11	3,108 32:22	<b>7</b> 68:4,15
65:18	2016 20:2,	30 36:11	<b>70</b> 36:9
10:16 63:22	24 21:2,	47:2	<b>703</b> 58:20
10:21 63:22	11,22	300 56:17,	
10:49 82:4	22:6,17	18	<b>8</b>
115 39:13	2017 20:24	302 56:17	<b>8</b> 60:10,11
40:4	2018 7:4	31 80:15	<b>80</b> 36:9
123,000	10:11	31,000 80:20	
67:22	21:24,25	339 59:8	<b>9</b>
144 80:13,	23:11	346 64:13	<b>911</b> 64:6
18	25:20	370-plus	70:11,25
18 7:4 19:8	31:17 49:4	40:4	<b>911-41</b> 70:17
54:22	64:13 78:4		<b>91141 (b)</b>
180 60:9	202 77:22	<b>4</b>	64:17
19 44:13	21-2-300	41 71:2	78:22
1998 68:4,	56:13	41 (b) 64:8	<b>99.95</b> 75:20
15	21-2-383 (b)	66:22	<b>9:04</b> 7:4
1999 34:1,4	52:13	475 64:15	
	2125-22		
	64:22		
	2125-22 (3)		

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

Transcript of Trial Proceedings on 01/18/2019

Index: a.m...appears

<b>A</b>	<b>active-duty</b>	68:18, 20	<b>allowed</b>
	45:18	77:13	55:15 59:9
<b>a.m.</b> 7:4	<b>activities</b>	<b>admittedly</b>	60:22 64:9
63:22 82:4	34:13	60:15	66:22
	35:6, 15	<b>admonished</b>	<b>allowing</b>
<b>absolutely</b>	<b>actual</b> 45:2,	48:2	74:6
62:2 79:15	4, 17 53:10	<b>adopt</b> 68:1	<b>alluded</b>
80:22	70:2	74:22	48:1, 13
<b>academy</b>	<b>add</b> 61:11	<b>adverse</b>	60:22
58:11	<b>addition</b>	20:18	<b>alter</b> 26:20
59:2, 24	35:1 69:9	<b>advocate</b>	<b>altered</b>
60:17, 18	<b>additional</b>	28:6 62:1	27:22
61:9	67:8 76:1	<b>afraid</b> 63:10	<b>amazed</b> 17:2
<b>access</b> 28:11	78:1	<b>age</b> 48:4, 8	<b>AME</b> 23:22
29:4	<b>address</b> 8:22	<b>agencies</b>	24:8, 9, 20
30:10, 13,	30:8	71:9 72:11	<b>amendments</b>
17, 25	<b>adjudicate</b>	<b>agree</b> 61:10	11:20
47:4, 20	64:9	<b>ahead</b> 13:22	<b>Amico</b> 11:15
55:15	<b>adjudication</b>	14:2 21:6	15:17
<b>accessed</b>	66:22	33:8 35:13	80:18, 20
44:1	<b>administering</b>	48:2, 10	<b>Amico's</b>
<b>accessible</b>	19:1	57:20 62:6	11:18
28:15	<b>Administration</b>	71:4	14:13
<b>account</b>	59:11	<b>AJC</b> 32:4, 6	<b>amount</b> 66:13
39:20	<b>admissible</b>	<b>alarm</b> 47:20	<b>ample</b> 69:2
<b>accuracy</b>	58:15	<b>alarmed</b> 45:9	<b>Angeles</b> 10:4
26:10, 15	59:4, 20	<b>alerted</b>	11:4
44:17	62:17	57:13	<b>App</b> 59:9
48:18	<b>admission</b>	<b>alleging</b>	64:13
55:10	58:11	65:2 72:15	<b>appeared</b>
<b>accurate</b>	<b>admit</b> 61:18	<b>allowance</b>	67:1
70:2	<b>admitted</b>	59:10	<b>appears</b>
<b>accurately</b>	59:15		41:10
69:22			
<b>action</b> 78:22			

## COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.

Transcript of Trial Proceedings on 01/18/2019 Lex: applications..Bernhard

52:17 60:9	<b>attorney</b>	63:22	18:6, 11, 15
<b>applications</b>	10:1	65:20	27:11
39:6	<b>attorneys</b>	81:25	29:18
<b>apply</b> 8:17	68:2	<b>background</b>	33:22, 24
<b>approved</b>	<b>August</b> 38:18	34:2 71:10	48:1
75:9	<b>Austin</b> 34:4	<b>bad</b> 71:20	49:11, 20
<b>area</b> 31:24	<b>authority</b>	74:25	52:4, 22
33:13 54:6	35:18 79:6	75:1, 2, 9	53:4 56:13
<b>argue</b> 55:24	<b>average</b>	<b>bailiffs</b> 8:2	57:4 58:6
<b>argued</b> 61:8	71:18	<b>BALIFF</b> 63:25	<b>Barron's</b>
<b>arguing</b> 62:8	<b>aware</b> 21:18	<b>ballot</b>	20:6
<b>argument</b>	24:6, 10, 22	10:18, 20,	<b>base</b> 67:2
58:11, 15	27:20 28:1	25 11:15,	<b>based</b> 30:6
68:2	31:15	22, 25	39:15
<b>arisen</b> 55:20	32:2, 11, 18	12:2, 10	66:10
<b>assigned</b>	36:15, 20	14:10 16:6	74:18
40:9, 18	37:6, 10	28:15	<b>basic</b> 26:11
71:9	46:17	30:8, 10,	<b>basically</b>
<b>assisting</b>	47:11	15, 22, 25	34:24 54:4
58:22	50:2, 6, 8	38:20, 24	<b>basis</b> 58:15
<b>assume</b>	51:20, 22	39:11, 13	67:13 74:4
80:15, 18	52:4 61:22	40:2, 6, 13,	77:24
<b>assumes</b> 21:6	62:11, 13	25 41:6, 9	78:17
<b>assuming</b>	79:9	42:2, 6, 15	<b>began</b> 38:18
16:10 21:4		57:6 58:2	<b>beginning</b>
<b>attack</b> 71:11	<b>B</b>	67:1, 6	11:25 12:1
79:6	<b>back</b> 11:25	69:4 72:20	27:2 68:4
<b>attacks</b>	12:1, 24	78:4 79:22	<b>begins</b> 60:10
37:11	15:13	<b>ballots</b>	<b>behalf</b> 52:25
<b>attempting</b>	17:15	30:11, 13	64:6 66:15
52:17	22:15	39:24	67:25
	41:13	<b>Barnes</b> 72:2	<b>Bernhard</b>
	42:2, 9	73:20 74:2	28:4
	55:18 56:2	<b>Barren</b> 72:6	
	60:24	<b>Barron</b> 17:20	

## COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.

Transcript of Trial Proceedings on 01/18/2019 Index: bi-witnesses..canceled

<b>bi-witnesses</b>	<b>briefly</b> 16:2	53:2 55:4,	70:13,18
76:6	49:8 58:13	6 56:2,6,	71:2 78:18
<b>biggest</b>	66:20 76:4	8,18 57:17	<b>button</b> 41:11
29:20,22	77:18	58:6,9	
<b>bit</b> 22:15	<b>bring</b> 55:18	59:22	<hr/> <b>C</b> <hr/>
34:2	<b>broken</b>	61:6,20	
<b>board</b> 16:4	44:11,24	62:10,24	<b>cable</b> 45:25
34:13,24	45:1 46:18	63:2,13,	47:10
35:17,18,	<b>brought</b>	15,20	<b>calibrate</b>
20 66:20	55:20	67:13	26:11
68:6	65:13	70:11 71:4	<b>call</b> 8:25
<b>boards</b> 35:18	79:15	74:15	17:20
<b>book</b> 34:20,	<b>Brown</b> 7:18,	77:4,18	19:22
22 36:20,	22 8:2,11,	78:2 81:2,	43:13 54:2
22 81:13	13,15,20,	10,13,15,	76:2
<b>book's</b> 30:18	24 9:2,6,	18,22	<b>called</b> 9:15
<b>books</b> 29:4	22,25 10:2	<b>Bruce</b> 9:25	18:8
<b>booth</b> 28:18	13:2 14:6,	<b>Bryan</b> 16:2	20:18,20
<b>boundaries</b>	8,20	<b>build</b> 38:22	29:20,22
39:18	17:11,15,	<b>building</b>	48:18
<b>box</b> 8:2,4	18,20,24	82:1	54:11
11:11	18:13	<b>burden</b> 79:24	69:17
<b>Boy</b> 8:4	20:17,20,	<b>Burwell</b>	<b>calls</b> 57:17
<b>breach</b> 61:2	22 21:4,15	21:2,6	<b>cameras</b>
<b>break</b> 46:15	24:17	24:13	45:10
47:9,10,15	27:17	29:6,9	47:20
<b>briefcase</b>	28:9,10	33:2,6,9,	76:15
81:25 82:2	29:8,18	11,15,18,	<b>campus</b> 72:9
<b>briefed</b>	31:20	22 35:10,	<b>cancel</b>
52:10	32:2,24	13 47:22	40:22,24
<b>briefing</b>	34:8 35:8	52:15	41:11,18
52:13	42:22	56:9,11,22	42:1,2
	49:18,20	57:1,2,9	<b>canceled</b>
	50:10	60:6 64:4,	41:11
	51:4,13,	6 66:24	
	17,22,25	67:20	
	52:2,20		



**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

Transcript of Trial Proceedings on 01/18/2019

Index: cancelled..code

<b>cancelled</b>	20 67:22	<b>change</b>	51:2	<b>cited</b>	68:24
42:18	68:11	64:25		81:15	
<b>candidate</b>	71:22	65:9,11,24		<b>city</b>	39:18
11:9 69:20	72:18	78:11		<b>Civic</b>	34:6
	73:13	79:25		<b>claims</b>	52:15
<b>candidates</b>		81:6,8		<b>clarified</b>	
38:22	<b>cases</b> 64:11			50:25	
65:20 67:8	80:8	<b>changed</b>		<b>clean</b>	81:11
<b>capability</b>	<b>cast</b> 12:4,	51:20 52:4		<b>clear</b>	19:17
27:11	10 42:15,	<b>charge</b> 19:1		63:11	
<b>card</b> 10:20	18 67:22	<b>Chattahoochee</b>		64:13 68:8	
21:25	69:20	40:13		77:22	
26:4,18,20	77:1,4	<b>checks</b> 28:13		78:15	
28:11 29:4	<b>category</b>	<b>ching-ching-ching</b> 63:11		79:20	
30:10,13,	11:10 17:4	<b>chip</b> 28:13		<b>clerk</b>	33:13
22 31:10,	<b>caused</b> 73:4	<b>choice</b> 36:4		<b>clerk's</b>	
11 41:15	75:18,22	69:20 73:2		33:13	
42:11	<b>causing</b>	<b>choices</b>		<b>close</b>	64:9
<b>cards</b> 21:20	72:20	76:17		80:22	
22:2,9,15	73:11	<b>choose</b> 66:8		<b>closed</b>	70:4
23:2 30:17	<b>certified</b>	<b>chose</b> 67:10		<b>closer</b>	33:17
31:13	77:6	76:8		<b>closing</b>	
44:1,4	<b>chain-of-</b>	<b>chosen</b> 78:2		56:22	
45:4 47:6	<b>custody</b>	80:4		<b>co-counsel</b>	
53:18,20	45:11	<b>Chrysler</b>		48:2	
67:2	<b>Chalk</b> 64:13	59:8		<b>coalition</b>	
<b>care</b> 19:2	<b>challenge</b>	<b>church</b> 23:24		16:17	
49:8 65:4	74:22	24:20		<b>COBB</b>	7:4
<b>case</b> 10:1	<b>challenging</b>	42:24		<b>code</b>	30:8,
24:11	80:8	<b>circumstances</b>		10,22	
52:11	<b>chance</b> 73:1,	43:9		34:20	
55:20	2 75:22	<b>cite</b> 59:8		35:22	
59:8,9,13	<b>chances</b>	64:13			
60:2,4	72:15				
61:2 62:2					
63:4					
64:10,13,					

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

Transcript of Trial Proceedings on 01/18/2019

Index: coding..counties

47:20	37:1	69:4	<b>controversy</b>
50:20,22			77:8
51:9,10	<b>components</b>	<b>connected</b>	
52:22	72:6	31:4,6	<b>conveniently</b>
74:25	<b>compromise</b>	38:6,11	78:2
75:1,2,9	20:11 72:2	<b>connection</b>	<b>copy</b> 20:2
76:2	<b>compromised</b>	34:13	60:6,13
<b>coding</b> 23:11	20:2	<b>consensus</b>	<b>correct</b> 12:9
25:9,11	<b>computation</b>	59:22	14:18
<b>colleagues</b>	66:4	71:6,8	15:11,13,
70:9	<b>computer</b>	73:6	22 16:9
<b>combination</b>	27:20	<b>construe</b>	19:13,18,
75:11	33:17	64:17	20,22
<b>communication</b>	49:13	<b>contact</b>	21:25
52:18	70:15,20	43:11	22:4,6
<b>Company</b>	<b>computers</b>	44:25	23:2,22
64:15	73:11	<b>contemporaneou</b>	24:1,2
<b>compare</b>	<b>concern</b>	<b>sly</b> 24:18	26:11 29:2
72:20	32:13	<b>contest</b>	30:18 31:2
<b>complain</b>	43:17,25	64:22	37:2 38:15
12:15	<b>concerned</b>	67:15	39:10,11
66:13	74:4	<b>continue</b>	40:15
<b>complained</b>	<b>concerns</b>	63:6	42:13,20
14:4	43:20 70:6	<b>continues</b>	43:2,4
<b>complaint</b>	<b>conclude</b>	60:11	53:11,15,
24:22	59:22	<b>contractors</b>	18,20
<b>complaints</b>	<b>concluded</b>	19:10	55:11
53:24 57:4	82:4	<b>contradicted</b>	<b>correctly</b>
<b>complete</b>	<b>conduct</b>	69:22	69:20
60:6,11,13	48:18	<b>contrary</b>	77:1,6
<b>completed</b>	68:22	61:22	<b>costed</b> 76:15
78:24	<b>conducted</b>	62:11	<b>counsel</b>
<b>component</b>	76:6,9,11	67:18 71:8	55:18,22
	<b>confusion</b>	77:9	61:22
			<b>counted</b> 67:2
			<b>counties</b>

## COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.

Transcript of Trial Proceedings on 01/18/2019

Index: counting..day

22:15,20	25 8:2,9,	64:2,4,8,	<b>crowbar</b>
23:6 51:1	11,13,15,	11,13,17,	47:13
<b>counting</b>	18,22 9:1	18 65:22	<b>Curling</b>
70:4	13:4,11,	66:24	50:11
<b>country</b>	15,18,20,	68:11,13,	52:11
59:25 60:4	24 14:1	15 70:11,	<b>cut</b> 47:10
78:13	15:25	13,20,22,	<b>cycle</b> 51:2
<b>county</b> 7:4	17:11,13,	25 71:4	
16:2	15 20:9,	74:13	
18:18,20	13,18	75:15 76:4	<b>D</b>
19:2,22	21:10	77:17,22	
21:1 22:9	24:11,15	78:15,18,	<b>data</b> 58:20
23:11,20,	27:13 28:6	20,24	<b>database</b>
22 25:20	29:11	81:4,11,	21:2 22:10
30:4 31:9	31:22	13,17,18,	23:11,13
32:22	33:1,4,8,	20,24	26:9 28:24
34:4,8,10,	10,11,15,	<b>cover</b> 60:8	29:2 53:10
13 35:18,	24 35:11,	<b>Crawford</b>	54:10,11
24 36:2,8,	24 36:11	68:4,15	<b>date</b> 26:11
10,13,17	47:24 48:9	<b>create</b> 41:15	<b>daughter</b>
37:4,11,20	49:6,18	<b>created</b>	12:22 14:4
39:17	50:2,4,11	21:24	15:20
43:22	51:4,8,15,	28:18	16:15
52:10	18,22	40:25	<b>dawn</b> 11:11
55:8,11,15	52:1,10,	42:11	<b>dawned</b> 11:22
57:4 64:6	11,18 53:2	43:13	<b>day</b> 7:17
66:20 68:2	55:6,22,24	53:24	25:6,15
69:15 70:9	56:2,4,6,	54:4,20	30:18
<b>County's</b>	11,20,24	68:9	40:6,8,15
20:22	57:2,11,	<b>cross</b> 20:18	42:20,25
21:2,20	20,22	77:13	44:11,15
66:20	58:6,22	<b>CROSS-</b>	54:4 58:1
<b>couple</b> 48:13	59:9,17	<b>EXAMINATION</b>	69:18
71:15	61:6,18,	14:22	76:11
<b>court</b> 7:8,	20,25	33:20	78:13
11,15,22,	62:15,17,		
	25 63:8,		
	15,17,25		

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

Transcript of Trial Proceedings on 01/18/2019

Index: days..districts

<b>days</b> 44:13	72:11	<b>determine</b> 42:13	
47:2	<b>defined</b>	23:11	<b>disaffected</b>
<b>deal</b> 60:15	29:10	24:25 27:8	72:6
<b>dealing</b> 19:4	<b>degree</b> 75:20	<b>determiner</b>	<b>disclosed</b>
<b>deals</b> 70:2	<b>delivered</b>	64:11	58:20
<b>December</b>	44:18	<b>determines</b>	<b>discover</b>
25:22, 25	45:15, 22	58:22	75:11
26:2 34:1	<b>deliveries</b>	64:18	<b>discovery</b>
<b>decide</b> 75:15	45:20	<b>deviation</b>	55:18
<b>decision</b>	<b>demand</b> 63:2,	76:18 78:6	<b>discredited</b>
50:11	4, 6	<b>device</b> 22:25	73:17
62:15 68:4	<b>Democrat</b>	<b>Diebold</b>	<b>discretion</b>
70:20	16:25	61:13	76:2
<b>decisions</b>	<b>Democratic</b>	<b>differ</b> 40:6	<b>discussion</b>
75:6	73:25	<b>difference</b>	81:15
<b>decrepitude</b>	<b>demonstrated</b>	51:10	<b>disinfect</b>
71:13	80:10	62:13	21:2, 15
<b>defective</b>	<b>depends</b>	66:13	22:18, 22
59:11	19:11	75:18	<b>disinfected</b>
71:22	<b>describe</b>	<b>differently</b>	21:22
<b>defects</b>	16:22 26:6	52:4	22:15
21:18	54:1 58:13	<b>difficult</b>	<b>dismiss</b> 64:9
59:11	<b>describing</b>	16:22	81:1
62:11	53:13	<b>direct</b> 9:18	<b>dismissal</b>
<b>defendant</b>	<b>design</b> 67:6	13:11	64:6, 15
52:15 64:2	78:4	18:11	79:2
78:25	<b>desk</b> 43:11,	20:13, 20	<b>dispatch</b>
<b>defendants</b>	13 54:4,	69:17	54:8
74:20, 22	13, 15	<b>director</b>	<b>disproven</b>
75:4	81:11	18:20, 24	67:13
<b>defendants'</b>	<b>detail</b> 54:2	43:20 52:9	<b>districts</b>
72:22	<b>details</b>	<b>disabled</b>	39:15, 17,
<b>defense</b>	76:15	41:1, 2, 8,	18, 20
		11, 15	

## COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.

Transcript of Trial Proceedings on 01/18/2019 Index: document..employed

<b>document</b>	61:13	24:4,18	<b>election's</b>
60:8,10	71:13	25:20,22	80:9
<b>door</b> 45:25	<b>drive</b> 10:8	26:4,9,13,	<b>Electionet</b>
47:4,20	17:15	18 27:22	29:25
<b>doors</b> 47:13	<b>duly</b> 9:15	28:25	<b>elections</b>
<b>doubt</b> 64:25	18:8	30:18	16:4
65:9,24	<b>Duncan</b> 11:15	31:17	18:20,25
67:17	<b>duties</b> 39:8	34:13,20,	19:2 22:4,
79:25		24 35:6,	6 33:25
80:11		15,17	34:2,4,15
<b>downtown</b>	<b>E</b>	37:24	35:18,20
61:8	<b>E-NET</b> 29:25	38:2,17,18	38:22
<b>drastic</b> 68:6	<b>earlier</b>	39:10,15	43:20 52:9
80:6	56:15	40:6,8,15	60:1 66:20
<b>DRE</b> 25:20	<b>early</b> 19:11	44:15	67:13 75:6
28:15	30:11 38:4	46:20	78:6
30:25	39:4,22,24	48:15	<b>electricity</b>
36:6,13,17	40:1,11,20	50:20	38:9,13
37:15,17,	44:6,13	51:2,6	<b>electronic</b>
20 38:1,4,	47:11	54:4,22	10:15
10,11	<b>echo</b> 66:22	61:4,17	25:13
42:22	<b>Edward</b> 77:4	64:22,24,	28:18
43:22	<b>effect</b> 27:22	25 65:2	72:20
45:2,4,22	58:25 59:4	66:11,17	74:24 75:6
49:22	<b>effective</b>	67:15	78:9
50:1,15	71:25	69:15,18	<b>electronics</b>
55:9 56:15	<b>efforts</b> 21:1	72:4,15	72:20
65:2 79:8	<b>elect-</b> 78:4	73:18	<b>elicited</b>
80:2	<b>election</b>	74:22	69:10
<b>DRE's</b> 41:24	11:15	75:15,22,	<b>eligible</b>
<b>DRE-BASED</b>	19:9,18	25 76:11,	28:25
35:25	20:1 21:25	13,25	<b>email</b> 14:6
<b>DRES</b> 47:18	23:11	77:24	<b>employed</b>
50:24		78:17	18:17
52:8,15,24		79:22	
		80:1,4,8,	
		11,25	

## COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.

Transcript of Trial Proceedings on 01/18/2019

Index: employees..eye

<b>employees</b>	79:1	<b>examination</b>	<b>experts</b>
19:6,10		9:18 18:11	58:15
<b>enables</b>	<b>eventually</b>	25:18 27:8	<b>explain</b>
30:13	81:8	77:13	39:22 41:2
<b>end</b> 11:22	<b>everybody's</b>	<b>examined</b>	46:4 48:2,
12:9 33:15	70:13	21:17	20
78:13	<b>everything's</b>	55:13	<b>explained</b>
<b>Enet</b> 30:4	8:6	<b>exception</b>	77:18
31:2,8,15	<b>evidence</b>	59:6 60:20	<b>explanation</b>
32:4	21:8 50:9	<b>excuse</b> 13:6	74:17
<b>English</b>	59:15,18	56:18	78:11
63:11	60:2	<b>excused</b>	<b>explanations</b>
<b>ensure</b> 69:18	61:18,22	17:13	77:15
<b>entire</b> 55:25	62:10,11	<b>exercise</b>	<b>express</b>
<b>entity</b> 60:18	64:18	76:1	28:15,18,
<b>equal</b> 80:13	65:10,25	<b>existed</b>	20 29:1
<b>equipment</b>	66:1,6,24	76:20	30:18,22
27:6 36:2,	67:11,15,	<b>experience</b>	31:1,11,13
4 44:8	18,20	7:20	41:1,4,13
75:8	68:8,17,22	<b>experienced</b>	42:2,9
<b>erase</b> 27:1	69:10	13:1	<b>expressed</b>
<b>error</b> 80:15	71:4,8,11,	<b>experiences</b>	28:4
<b>errors</b> 23:13	22,24	73:9	<b>expression</b>
25:9,11,13	72:2,18,25	<b>expert</b> 8:18,	29:4
<b>established</b>	73:6,9,13,	20 60:22	<b>extent</b> 61:4
71:4 72:4	15 74:2,	61:15	<b>external</b>
80:9	17,20	68:18	37:11,18
<b>evaluate</b>	75:20 77:9	69:13,25	<b>extraordinary</b>
58:22	78:1,25	70:4	68:6
<b>evaluated</b>	79:1,18	72:10,17	<b>extremely</b>
76:2	80:15,22,	73:6 74:11	69:11
<b>event</b> 75:24	24 81:2	77:13	<b>eye</b> 7:18
	<b>evidentiary</b>	<b>expert's</b>	
	58:11	58:24	
	<b>evolved</b>		
	72:22		

## COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.

Transcript of Trial Proceedings on 01/18/2019

Index: face..gentlemen

	<b>find</b> 25:2	<b>forgotten</b> 43:22 52:9	
<b>F</b>	34:18	70:15	55:8,11,15
	50:20		57:4 64:6
<b>face</b> 63:13	62:17	<b>forms</b> 45:11	66:20 68:2
<b>facie</b> 75:17	65:22	<b>formulations</b> 69:15 70:9	
77:18	74:25		
<b>facilities</b>	75:1,2,10	<b>Fulton's</b> 67:24	
53:4	<b>finder</b> 64:11	<b>Forty-one</b> 71:2	
<b>fact</b> 31:24	<b>fine</b> 13:20	<b>forward</b> 12:8	<b>function</b> 73:18
42:17 50:8	<b>finish</b> 13:8,	<b>found</b> 25:4	
60:2 64:8,	9,22 14:1	55:25	
11 68:6,10	62:6	<b>foundation</b>	<b>G</b>
69:2 75:15	<b>fire-</b> 45:18	20:6,11	<b>Ga</b> 59:9
76:6 78:4	<b>firemen</b>	21:9 27:11	64:13
<b>facts</b> 21:4,6	45:18,20	31:18	68:4,15
58:20	<b>firm</b> 59:9	<b>fraud</b> 64:24	77:22
64:18 79:2	<b>first-hand</b>	<b>freakish</b>	<b>gain</b> 24:18
<b>fail</b> 67:15	43:2	73:15	<b>GEM</b> 19:22
<b>fair</b> 22:20	<b>fit</b> 60:20	<b>FRIDAY</b> 7:4	37:4,8
23:10 48:4	<b>flash</b> 31:11	<b>full</b> 18:15	<b>GEMS</b> 20:2,
<b>fall</b> 51:2	41:17	<b>full-time</b>	11,22 21:2
<b>false</b> 31:25	<b>follow</b> 32:6	19:6	22:9
<b>familiar</b>	34:15,18	<b>fully</b> 67:24	23:11,13
11:22	35:2	<b>Fulton</b> 18:18	36:25
68:18	<b>follow-up</b>	19:2 20:22	47:17
<b>favorably</b>	57:10	21:1,2,20	53:6,9,10
64:18	<b>force</b> 8:11	23:11,22	<b>general</b>
<b>favor</b>	<b>foremost</b>	25:20	38:17 51:6
67:20	52:17	32:22	71:18
<b>federal</b>	<b>forensic</b>	34:10,13	<b>generally</b>
50:11 51:4	27:6	35:18,24	61:13
52:11	<b>forensically</b>	36:8,10,	<b>gentleman</b>
<b>filed</b> 64:22	55:11	13,17	60:20
		37:4,11,20	<b>gentlemen</b>
			7:8

## COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.

Transcript of Trial Proceedings on 01/18/2019

Index: George..Honor

<b>George</b> 71:13	<b>governor</b>	<b>half</b> 18:22	58:17 59:6
	57:6 68:1		60:24
<b>Georgetown</b>	69:6 74:8,	<b>hand</b> 9:2	62:22
34:8	9 78:10,11	65:17	
		73:15	<b>helpful</b> 60:2
<b>Georgia</b> 7:4	<b>governor's</b>	<b>handled</b> 81:4	<b>high</b> 10:13
10:6 11:8	10:22,24		69:4 75:20
13:22	11:6 16:11	<b>handles</b> 46:1	
15:2,8	58:2 66:6,	<b>happen</b>	<b>highly</b> 71:6
34:20 36:2	9,25 78:6	73:11,15	73:17
50:22			
52:22	<b>Governors</b>	<b>happened</b>	<b>Highway</b>
61:1,13	69:6	12:25	59:10
62:13		24:20 25:1	<b>Hills</b> 40:13
64:13,15	<b>grant</b> 81:1	42:22 43:2	<b>history</b> 69:6
71:15	<b>granted</b> 79:2	69:13	
74:24	<b>great</b> 76:15	72:15	<b>home</b> 12:24
75:6,8	<b>greater</b> 54:1	78:15	17:15
77:4,22	<b>greatly</b> 59:2	<b>happening</b>	<b>Honor</b> 7:13,
78:15	<b>grounds</b> 64:8	47:11 78:2	18 8:6,11,
<b>Georgia's</b>	79:2	<b>hard</b> 27:2	24 13:22
71:13,20		<b>Hart</b> 68:4,	17:11,20
72:8,13	<b>groups</b> 16:17	13 70:20	20:4,17
<b>get all</b>	<b>guards</b> 69:18	<b>Hartman</b> 34:6	21:2,6
38:20,25	<b>guess</b> 54:18		24:13
39:2,4	78:20	<b>hate</b> 15:4	27:10 28:9
<b>give</b> 7:25	<b>guessing</b>	<b>head</b> 21:6	29:6 31:18
<b>giving</b> 55:22	16:24	<b>headed</b> 72:24	33:2 35:8,
60:22	<b>Gwinnett</b>		10 47:25
62:20	16:2 66:20	<b>hear</b> 63:18	51:13
<b>goal</b> 61:8	68:2 70:9	70:11	52:15
<b>good</b> 7:8,18		<b>heard</b> 28:2,4	55:18
13:22		68:18	56:2,9,18
33:18 48:2	<b>H</b>		57:17 58:9
71:18	<b>hacking</b>	<b>hearing</b>	59:1,13,22
	31:15 32:4	55:22 63:8	60:6,15,25
<b>governmental</b>	70:4	76:2 82:4	61:10,20,
60:18 71:9		<b>hearsay</b>	22 62:11,
			15,24



**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

Transcript of Trial Proceedings on 01/18/2019 Index: hooked..interrupting

63:2, 4, 13,	67:10	<b>Independent</b>	<b>insert</b> 26:18
18 64:6	69:13	16:25	<b>inserted</b>
66:18, 20	72:13	<b>independently</b>	30:17
67:25	<b>importantly</b>	59:4	<b>insertion</b>
70:18, 24	76:11	<b>indication</b>	26:20
71:4 72:22	<b>improperly</b>	67:20	<b>inspect</b> 25:8
73:13	44:1	<b>individual</b>	<b>inspections</b>
74:2, 22	<b>impropriety</b>	68:22	76:24
75:1, 20	65:25	76:15 77:2	<b>instance</b>
76:1, 4	66:15	<b>individuals</b>	42:1 46:17
77:15	<b>inability</b>	66:8	<b>instant</b>
81:2, 20, 22	75:11	<b>inference</b>	64:20
82:2	<b>inadmissible</b>	58:22	<b>instruct</b>
<b>hooked</b>	58:20	<b>infiltrated</b>	62:15
37:15, 17	<b>inappropriate</b>	36:17	<b>insulate</b>
<b>House</b> 39:18	66:6	<b>inform</b> 30:4	75:6
<b>hundreds</b>	<b>inaudible</b>	<b>information</b>	<b>interested</b>
54:24	8:6, 8 17:6	24:13	16:18
<hr/> <b>I</b> <hr/>	53:1 62:15	28:24	<b>interesting</b>
<b>idea</b> 48:2	68:6 71:6	30:9, 20, 24	8:4
74:15	75:25	31:2, 4, 8	<b>internal</b>
<b>identifies</b>	81:10	38:20 52:1	26:22
46:10	<b>incidents</b>	65:15, 17,	54:13
<b>ignore</b> 78:2	24:2	20, 22	<b>Internet</b>
<b>illegal</b>	<b>include</b>	66:10	37:15
65:8, 11	52:13	<b>informed</b>	<b>interpret</b>
67:22	<b>including</b>	73:6	34:25
79:17	67:10 69:2	<b>initially</b>	<b>interpreted</b>
<b>illegality</b>	<b>inconsistent</b>	11:17	52:4
79:24	75:11	<b>input</b> 48:22	<b>interrupt</b>
<b>immediately</b>	<b>increases</b>	49:15	68:11
25:22	19:11	<b>inquire</b>	<b>interrupting</b>
<b>important</b>	72:15	31:25	

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

Transcript of Trial Proceedings on 01/18/2018 Index: investigate..lieutenant

56:1	<b>issues</b> 16:18	<b>key</b> 45:13	79:2,20
<b>investigate</b>	29:15	<b>keypad</b> 45:8	80:4
32:9	36:13,20	<b>kind</b> 24:25	<b>lawsuit</b>
<b>investigating</b>	37:4 55:20	68:8,9,22	24:15
32:11	67:9	76:13,18	<b>lawyer</b> 56:25
<b>investigation</b>	<hr/> <b>J</b> <hr/>	<b>kinds</b> 79:9	62:2
24:25		<b>knowledge</b>	<b>lay</b> 56:24
32:18	<b>January</b> 7:4	20:6 22:18	<b>layout</b> 69:4
59:11	<b>Jeff</b> 68:1	23:6 43:2	<b>lays</b> 68:4
<b>involuntary</b>	<b>join</b> 67:24	51:6 61:11	<b>leading</b>
64:6	<b>joins</b> 66:20		20:13 29:9
<b>involve</b>	<b>jokes</b> 48:11	<hr/> <b>L</b> <hr/>	51:2
26:15	<b>judge</b> 34:2	<b>lack</b> 29:2	<b>learned</b>
<b>involved</b>	38:15	67:6	24:15 27:6
16:17	39:11,22	<b>ladies</b> 7:8	<b>leave</b> 62:15
33:25	41:2 43:8	<b>laid</b> 20:10	<b>Leclerc</b>
<b>involving</b>	44:2 45:2	21:9	23:15
32:4	46:4 47:15	27:11,13	<b>Leclerc's</b>
<b>irregularities</b>	48:15,20	<b>language</b>	43:4
67:15	55:20,22	29:15	<b>led</b> 65:25
<b>irregularity</b>	81:6	<b>large</b> 11:6	66:2 68:22
64:24 78:2	<b>judges</b> 63:10	17:6 45:8	<b>left</b> 12:22
79:24	81:6	66:13	78:13
<b>irrelevant</b>	<b>judicial</b>	<b>late</b> 7:9	<b>legal</b> 65:22
60:25	75:8	<b>law</b> 8:15	66:17
<b>issue</b> 8:22	<b>jury</b> 8:4	34:15,18,	67:22
25:4 42:22	58:20,22	25 36:2	79:18,22
43:10 60:4	63:2	49:20 50:1	<b>legislature</b>
65:18	78:20,24	51:6,10,18	75:13
68:8,9		56:22	<b>level</b> 30:4
74:13	<hr/> <b>K</b> <hr/>	58:13,17,	<b>lieutenant</b>
77:22		18 63:4	10:24
79:20 80:2	<b>Kaolin</b> 64:15	64:11,20	
	<b>Kemp</b> 50:11	75:17	

## COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.

Transcript of Trial Proceedings on 01/18/2019

Index: life..making

16:11 57:6	<b>Lithonia</b>		61:13
58:2 66:4,	10:6, 8, 13	<b>M</b>	62:22
8, 25 68:1	<b>live</b> 10:6	<b>machine</b>	65:2, 4
69:6 74:8,	26:10 31:6	10:15, 20	71:11, 15,
9 78:11	40:11	25:6, 9	17 73:2
<b>life</b> 27:2	76:15	27:2 31:2	75:18, 22
<b>lightly</b> 80:6	<b>load</b> 26:9	36:17	76:25
<b>likelihood</b>	<b>loaded</b> 28:24	37:15, 17	<b>made</b> 24:22
75:18	<b>local</b> 38:20	38:1, 10, 11	27:9 46:6
<b>Lindsey</b>	<b>located</b> 47:6	40:20	58:15
7:11, 13	<b>location</b>	41:20	75:17
8:6, 10	46:18	42:22	<b>maintain</b>
13:6, 10,	53:18	43:17 47:4	47:1
20, 22	<b>locations</b>	48:15	<b>maintained</b>
14:2, 25	45:17	49:1, 2	30:2 71:15
15:24	<b>lock</b> 45:13	60:4 74:24	<b>major</b> 63:11
20:10	<b>log</b> 54:11	76:24 78:9	<b>make</b> 17:4
47:24, 25	<b>logic</b> 26:10,	<b>machines</b>	19:17
48:6, 11, 13	13 48:18	25:20	22:8, 20
49:6 51:4	55:9	26:17	26:11 29:2
55:18	<b>long</b> 18:22	27:22, 24	30:15
57:10, 11,	33:24 47:1	32:22	31:22, 25
20, 22, 25	81:6	36:6, 13	35:1 38:20
58:4 60:15	<b>looked</b> 14:9,	37:11, 20,	39:2, 4
61:15	11 16:6	22 38:4, 6	46:2 48:24
63:18	73:22	39:4 42:4	49:15
67:25	<b>Los</b> 10:4	43:22	54:15
68:13, 15,	11:4	44:4, 6, 11	56:24
17 70:18,	<b>lose</b> 75:2	45:4, 6, 13,	58:10 62:2
22, 24	<b>lot</b> 69:13	15, 22	63:10
73:20 74:1	71:11	46:11, 15,	70:10
76:4 77:4	<b>lots</b> 39:6	22 47:11	76:25 77:4
82:2		49:2, 22	<b>makes</b> 41:17
<b>listen</b> 62:20		50:1, 15	<b>making</b> 8:6
<b>listened</b>		53:13	11:8 22:13
43:4		55:9, 13, 15	
		56:15	

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

Transcript of Trial Proceedings on 01/18/2019

Index: MALE..noticed

32:1 76:17	<b>measures</b>	<b>minutes</b>	<b>municipalities</b>
<b>MALE</b> 64:1	47:17	63:18	38:22
<b>malfunctions</b>	<b>mechanical</b>	<b>mis-program</b>	
12:11	25:13	22:24	<b>N</b>
<b>malicious</b>	<b>media</b> 19:4	<b>misconduct</b>	<b>narrow</b> 80:2
68:9,22	47:4	64:24	<b>NAS</b> 61:6
<b>malware</b>	<b>memory</b>	<b>misprogramming</b>	<b>national</b>
21:17	21:20,25	73:4 75:2	58:11
22:24	22:2,9,15	<b>missed</b> 16:13	59:2,10,24
68:22 73:4	23:2 26:4,	<b>Mm-hmm</b> 56:11	60:17
76:9,20	22 27:9,24	<b>mode</b> 41:1,	62:11
77:11	31:11	6,8,13,15	71:6,8,13,
<b>mandated</b>	43:25 44:4	42:11,13	17 72:9
56:15	53:17,20		73:6
<b>manually</b>	<b>mentioned</b>	<b>modes</b> 41:6	<b>naturally</b>
49:15	53:6	<b>moment</b> 32:24	72:13
<b>margin</b> 65:18	<b>mere</b> 77:24	<b>morning</b> 7:8,	<b>nature</b> 74:15
67:22	78:15	18 10:9	<b>needed</b> 21:9
<b>marked</b> 53:13	<b>merits</b> 66:22	12:22 14:6	<b>negligent</b>
<b>match</b> 48:24	<b>metal</b> 46:8	21:11	68:9
<b>material</b>	47:13	29:17 33:4	<b>night</b> 14:4
62:13	<b>mic</b> 21:11	65:15	<b>non-jury</b>
<b>mathematical</b>	<b>Michael</b> 72:2	<b>motion</b> 64:2,	64:15
66:4 68:20	<b>microscopic</b>	9 66:20	<b>nonliving</b>
<b>matter</b> 50:8	73:1	67:24	64:18
64:15	<b>Middleton</b>	77:15 79:2	<b>nonprofit</b>
68:10 76:6	77:22	81:1	60:20
<b>matters</b>	<b>mind</b> 81:6,8	<b>move</b> 7:10,	<b>noon</b> 7:10
77:11	<b>minds</b> 57:18	15 64:6	<b>note</b> 59:4
<b>means</b> 39:13	<b>minute</b> 7:9,	79:2	60:6 79:4
41:4	25 55:4	<b>movement</b>	<b>noticed</b>
<b>meantime</b>	81:11,24	50:6	12:13,15
43:15		<b>multiple</b>	
		55:20	

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**  
**Transcript of Trial Proceedings on 01/18/2019 Index: November..part-time**

<b>November</b>	<b>objections</b>	<b>operating</b>	<b>overcome</b>
10:11	55:24	69:18 77:1	80:24
23:11	<b>observe</b>	<b>operation</b>	<b>overruled</b>
24:18	27:11	25:15	55:24
31:17	<b>observed</b>	<b>operator</b>	<b>oversee</b>
37:24	43:6	41:13	35:6,15
38:17			54:6
39:15 49:4	<b>occasions</b>	<b>opinion</b>	
54:22	55:20	27:22	<b>overseeing</b>
<b>number</b> 46:9	<b>occur</b> 40:20	28:2,4	19:4 23:20
62:18	67:6	50:2 51:2	34:13
67:4,8,22		58:22,24	
69:4 78:6	<b>occurred</b>	59:2 60:22	<b>overturn</b>
80:22	61:2	62:20	77:24
81:15	<b>occurs</b> 45:17	72:11,17	<b>overturned</b>
			75:25
<b>numbers</b>	<b>OCGA</b> 52:13	<b>opportunity</b>	
44:8,9,20,	56:13 59:6	55:22	<b>overturning</b>
22 80:13,	<b>offer</b> 79:1	<b>opposite</b>	78:17
20	<b>offhand</b>	59:11	<b>owns</b> 36:6
	50:17	<b>option</b> 41:13	
<b>O</b>		67:11	<b>P</b>
	<b>office</b> 19:18	73:18,20	<b>packet</b> 27:2
<b>oath</b> 9:17	24:6,13,15		<b>pages</b> 10:25
18:9	43:13	<b>order</b> 63:25	60:9,10
<b>object</b> 20:4	44:25 51:1	<b>orders</b> 52:10	<b>paper</b> 72:20
21:2 27:10	57:22	<b>organization</b>	73:1 75:25
31:18 35:8	<b>officers</b>	60:20	
<b>objection</b>	45:18,20	<b>originally</b>	<b>paragraph</b>
20:15	<b>official</b>	46:22	60:11
24:13 29:6	51:6 64:25	<b>originates</b>	<b>parallel</b>
51:4	65:4 66:17	22:11	76:17
52:15,20,	69:15	<b>outlined</b>	<b>part</b> 28:22
25 56:6	<b>open</b> 46:15	70:6	36:1 48:11
57:17	54:18		70:6
<b>objectionable</b>	<b>opening</b> 56:4	<b>outweighs</b>	<b>part-time</b>
52:2		58:24 59:2	

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**  
**Transcript of Trial Proceedings on 01/18/2019 Index: partial..positions'**

19:9	<b>petitioners</b>	68:18,25	<b>poll</b> 12:17
<b>partial</b> 72:4	10:1 65:2	69:10,13,	19:2 23:17
	75:13	25 70:4	25:4
<b>particularities</b> 68:18	<b>ph</b> 68:1,13	<b>plaintiffs</b>	28:13,15,
	72:9 73:4	17:20	18,20
<b>party</b> 67:6	78:1 81:6	55:15	29:1,4
<b>pass</b> 49:4	<b>phrase</b> 31:22	64:22	30:18,22
<b>passed</b> 77:15	52:2	78:13 79:4	31:1
			36:20,22
<b>password-protected</b>	<b>phrased</b>	<b>plaintiffs'</b>	38:25 39:1
47:18	35:11	69:17	41:1,4,13
<b>past</b> 78:6,	<b>piece</b> 72:4	<b>plate</b> 47:13	42:2,6,9
11	<b>place</b> 8:8	<b>plausible</b>	43:11,15
	33:18	74:18	44:10,22
<b>penalties</b>	39:25	77:13	46:11
35:22	40:11,18	<b>plenty</b> 16:15	53:15
<b>people</b> 19:22	43:15		65:17
57:18	44:18	<b>plugged</b>	<b>poller</b> 54:2
59:18 74:4	65:9,11,24	38:13	<b>polling</b> 19:2
80:4	67:17	<b>podium</b>	39:1,25
<b>perceive</b>	69:24	33:10,11	40:11
62:10	76:10	<b>podiums</b>	43:15
	77:10	33:13	44:18
<b>percent</b>	79:25	<b>point</b> 11:13	46:18
36:9,11	<b>places</b> 19:2	26:6 49:9	<b>polls</b> 31:11,
66:4,13	39:1	51:9 58:9	13 65:11
75:20	<b>plaintiff</b>	59:4,13	<b>popped</b> 11:4
<b>person</b> 11:11	64:18 69:2	60:1 76:22	<b>position</b>
12:20 14:4	75:2 76:8	<b>pointed</b>	18:18,22
16:20 80:8	77:11	63:11	52:9 71:15
<b>personally</b>	78:22	<b>Poletto</b>	78:22
24:6 35:20	79:2,22	64:13	79:11
<b>petitioner</b>	<b>plaintiff's</b>	<b>police</b> 45:20	<b>positions</b>
75:17	55:18,22	<b>political</b>	49:15
<b>petitioner's</b>	64:10	39:20	<b>positions'</b>
64:20	67:13		

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**  
**Transcript of Trial Proceedings on 01/18/2019 Index: potential..questions**

72:22	13:17 22:4	44:2, 13	28:13 29:1
<b>potential</b>	<b>previously</b>	45:2	30:9, 24
78:13	20:15	<b>processed</b>	31:11, 13
<b>potentially</b>	<b>prima</b> 75:17	39:6	33:15
38:13	77:18	<b>product</b>	41:11
<b>precinct</b>	<b>prinicipally</b>	59:11	47:13
24:20	58:17	<b>promise</b> 9:2	54:18 55:8
30:11	<b>prior</b> 22:6	17:20	69:24 76:8
31:13 40:9	23:10	<b>proper</b> 20:11	<b>puts</b> 28:15
67:2 80:18	31:15	<b>properly</b>	<hr/> <b>Q</b> <hr/>
<b>precincts</b>	48:15	73:18 77:6	<b>question</b>
24:1	53:25	<b>proponent</b>	8:15
39:15, 20	61:11	58:20	13:13, 17
40:4, 10	76:11, 25	<b>proven</b> 75:18	20:13
54:6	<b>private</b>	<b>provide</b>	21:6, 11
<b>prejudicial</b>	60:20	64:15	22:22
58:24 59:4	<b>privileged</b>	<b>provided</b>	27:13
<b>prepare</b>	52:18	66:10	31:22
38:17	<b>probative</b>	<b>public</b> 54:17	35:11 50:9
<b>presentation</b>	58:22 59:2	59:6 60:18	52:2 61:1,
78:25	<b>problem</b> 7:13	62:18	4 74:1
<b>presented</b>	41:20	<b>pull</b> 10:18	<b>questioning</b>
73:4, 6, 20	68:10	40:13	55:25
77:11 78:8	73:10	<b>purchased</b>	<b>questions</b>
<b>presumed</b>	76:13	36:9, 10	13:4, 6, 11
67:15	77:22	<b>purely</b> 66:4	15:24
79:20	<b>problems</b>	<b>pursuant</b>	17:9, 11
<b>presumption</b>	15:20	64:6	19:17
67:18	<b>procedures</b>	<b>pushing</b>	29:11
79:22	39:9 80:9	49:13	33:1, 2
<b>pretty</b> 62:20	<b>process</b>	<b>put</b> 7:22	36:18
63:10	22:13	10:20	47:22, 25
<b>previous</b>	24:11 26:6		49:6 51:11
11:24	29:20 43:8		58:6 72:2
			73:20

## COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.

Transcript of Trial Proceedings on 01/18/2019 Index: quick..remember

<b>quick</b> 13:6	57:18	18:15 21:4	35:18,20
68:11	59:18,22	32:20	39:6
<b>quickly</b> 72:2	75:15 80:4	54:15	<b>Registrations</b>
<b>quote</b> 52:13	<b>ready</b> 26:13	55:15	16:4 66:20
<b>quoted</b> 56:4	38:20 39:4	61:20	<b>regular</b>
<b>quoting</b>	<b>realized</b>	62:18	41:6,13
58:18	78:20	63:22	42:11
	<b>reason</b> 22:13	65:22 66:6	<b>reinstalled</b>
<hr/> <b>R</b> <hr/>	63:4 69:9	67:11,20	20:2
	73:22	<b>recorded</b>	<b>rejected</b>
<b>race</b> 10:22,	77:15	44:8,9,22	65:8,22
24 11:6,15	<b>reasonable</b>	46:13	66:18
12:2 16:11	55:22 69:8	77:2,6	67:22
57:6 58:1,	78:11	<b>recording</b>	79:18
2 66:6,9,	<b>reasons</b> 67:4	49:15 70:2	<b>rejection</b>
25 67:6,11	69:2 70:8	<b>records</b>	65:11
68:18,20	<b>rebuttal</b>	54:18 59:6	<b>related</b> 32:4
78:4	8:18	<b>recounted</b>	33:2
79:10,13,	<b>rebutted</b>	72:10	<b>relating</b>
18	69:1	<b>recruited</b>	49:22
<b>races</b> 67:2	<b>recall</b> 20:25	39:1	<b>relevance</b>
78:9	23:15,20	<b>reference</b>	61:18
<b>raise</b> 9:2	53:6 57:8	31:20	<b>reliability</b>
<b>raised</b> 66:24	59:11	<b>referring</b>	43:20
68:2	<b>recap</b> 44:20	56:13	<b>relied</b> 61:15
<b>Raven</b> 81:6	46:15	68:11	62:18
<b>read</b> 32:4,	<b>receipt</b>	<b>reflect</b>	<b>relief</b> 79:4
6,15 50:11	65:11	21:4,11	<b>remarked</b>
56:22	<b>receive</b> 57:4	<b>refused</b> 7:11	74:2
59:18	<b>received</b>	<b>registration</b>	<b>remedy</b> 80:6
62:22	24:13 65:8	18:20,24	<b>remember</b>
68:2,4	79:17	19:4 28:22	11:2
70:15	<b>record</b> 9:22	29:2,22,25	
<b>reading</b>		34:15	
29:11			



**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

Transcript of Trial Proceedings on 01/18/2019

Index: remove..run

<b>remove</b> 22:24	<b>reproduces</b> 62:1 79:6	59:15
<b>renew</b> 58:11	31:11 81:2	60:22
63:2	<b>reprogram</b>	<b>respond</b> <b>Richard</b>
<b>renewing</b>	26:2 35:10	17:20
63:4	<b>reprogramming</b> <b>response</b>	18:6,11,15
<b>reopened</b>	26:15 72:2 76:4	33:22
25:6	27:9,22	<b>rest</b> 63:15 <b>rid</b> 79:11
<b>rephrase</b>	<b>Republican</b>	<b>result</b> 53:24 <b>roaming</b> 54:6
50:9	16:24 65:1,13,24	<b>rolls</b> 19:4
<b>replace</b>	73:25 67:13 69:4	<b>room</b> 38:10,
64:25	<b>request</b> 73:15	11
<b>replaced</b>	54:20 74:22	<b>Roswell</b>
20:22	58:11 79:25	40:13,17,
72:4,6	<b>requesting</b> 80:1,10	18
<b>report</b> 24:2,	66:22 <b>results</b>	<b>rule</b> 8:8,
8 31:20	48:24 61:4	13,17
58:13	<b>require</b> 65:9	34:20,22
59:2,4,10,	49:11 50:1 67:17,18	51:20 52:4
22 61:6,13	52:13 72:18	74:20
67:2,4	64:17 73:1,2,9	75:1,4,11
<b>reported</b>	<b>required</b> 75:22	81:4
69:22	34:15 35:2 77:10	<b>ruled</b> 55:22
<b>reports</b>	47:1 49:22	63:9,13
31:15,18	56:15	81:4,11
32:2 59:6	<b>requires</b>	<b>rules</b> 8:10,
66:25	50:22	11 34:25
69:11	52:22	35:1,22
<b>represent</b>	58:18	63:10
16:2	64:22	<b>ruling</b> 51:2
<b>representative</b>	<b>requiring</b>	<b>rulings</b>
39:18 80:6	52:6	63:11
<b>reproduce</b>	<b>reserved</b>	<b>run</b> 26:8,10
31:11	80:6	48:22
<b>respect</b> 28:6	<b>review</b> 23:11	49:11,13
44:4 45:2	75:8	
	<b>reviewed</b>	

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

Transcript of Trial Proceedings on 01/18/2019

Index: running..shown

63:13	27:20,22	<b>Secretary</b>	19:20
<b>running</b>	29:13 79:6	19:18	<b>sequestration</b>
11:11	<b>scientists</b>	20:1,6	8:11,13,17
16:20	72:11	32:18 51:1	<b>Sequoia</b> 34:6
26:20 69:8	<b>Scores</b> 54:24	69:15 75:6	<b>serial</b> 44:8,
<b>runoff</b> 25:25	<b>screen</b>	77:6	20
26:2 55:2	10:15,18	<b>section</b>	<b>server</b>
<b>RUSSO</b> 49:8,	12:13	64:22 65:6	19:18,22
10,18	14:10,18	<b>Sections</b>	20:1,22
	15:13	64:22	30:18,20
<b>S</b>	16:22	<b>secure</b> 53:4,	37:1 47:17
	25:13	18 61:2	53:6,11
<b>safe</b> 17:15	40:22 41:9	<b>secured</b>	72:4
69:18	42:10	53:18	<b>servers</b> 20:6
<b>safeguards</b>	49:13	<b>securing</b>	<b>set</b> 39:2
69:22	73:24	60:1	70:8 71:15
<b>safety</b> 44:4	<b>script</b>	<b>security</b>	<b>setting</b> 80:4
59:11	48:22,25	7:20,22	<b>sexist</b> 48:4
<b>Sara</b> 23:15	49:11	45:2 47:17	<b>sham</b> 73:4
<b>saved</b> 54:9	<b>seal</b> 44:6,	53:6 60:4	<b>sheet</b> 44:20
<b>scenarios</b>	9,11,22,25	<b>SED</b> 34:20,	46:15
73:2	46:4,9,10,	22	<b>shook</b> 21:6
<b>scholars</b>	13,17,22	<b>select</b> 41:13	<b>show</b> 42:10
72:11	47:2,9,10	<b>selects</b>	56:13 65:6
<b>School</b> 10:13	<b>sealed</b> 44:6,	30:22	75:13
<b>Science</b>	15 45:4	<b>senate</b> 39:18	80:15
59:24	47:4	67:6 78:4,	<b>showing</b>
<b>Science's</b>	<b>seals</b> 44:11,	10	75:18
59:2	22 45:22,	<b>send</b> 44:15	77:18
<b>Sciences</b>	24 46:15	54:4	79:24
58:13	<b>seat</b> 9:6	<b>sending</b>	<b>shown</b> 64:22
60:17,18	17:24	59:18	72:25 79:4
<b>scientific</b>	63:25	<b>separately</b>	
	<b>seats</b> 7:9		

## COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.

Transcript of Trial Proceedings on 01/18/2019 Index: shuffling.supporting

<b>shuffling</b>	<b>sort</b> 25:18	38:22	<b>subject</b>
75:25	66:1,15	39:18 67:1	35:20
<b>shut</b> 43:17	<b>source</b> 31:4	69:15,22	<b>subsection</b>
<b>sic</b> 22:24	<b>specific</b>	75:6 77:6	71:2
<b>side</b> 62:2	31:20	79:11	<b>subsequent</b>
63:18	61:11,17	<b>state's</b>	27:22
<b>sides</b> 62:4	76:24	19:18 20:6	<b>substantial</b>
<b>sign</b> 40:24	<b>specifically</b>	31:2 51:1	71:22
42:4	48:15 57:6	<b>state-</b> 56:15	<b>substantially</b>
<b>signs</b> 73:10	<b>speculation</b>	<b>stated</b> 60:22	58:24
<b>simply</b> 62:11	57:18	<b>statement</b>	<b>sued</b> 79:11
68:2,20	74:2,20	13:9 31:22	<b>sufficient</b>
<b>single</b> 66:11	77:25	56:4	64:25
<b>sir</b> 10:22	78:15	<b>statements</b>	65:9,11,
14:15	<b>spend</b> 71:22	31:25	20,24
15:2,15	<b>square</b> 17:2,	61:11	67:15
16:13,18	6	<b>states</b> 69:6	79:25
20:18	<b>squares</b> 11:6	71:20	80:24
47:24	16:8 17:4	<b>statewide</b>	<b>suggest</b>
57:22	<b>staff</b> 25:8	74:22	72:20
81:4,17	<b>stand</b> 8:25	<b>statute</b>	<b>suggested</b>
<b>skill</b> 27:11	76:8	50:13,15,	73:20
<b>small</b> 11:13	<b>standalone</b>	18 56:2	<b>suggests</b>
17:2	30:20	75:13	63:6
<b>smaller</b>	<b>start</b> 59:18	<b>stays</b> 27:2	<b>summary</b> 12:8
16:22	<b>state</b> 9:22	<b>story</b> 32:15	<b>sundry</b> 39:6
<b>Smith</b> 64:13	17:20	<b>straight</b>	<b>supervision</b>
77:22	18:15 20:1	30:17	24:25
<b>software</b>	30:2,4	<b>stuff</b> 59:18	27:18
20:2	31:11	63:11	<b>support</b>
36:13,20	32:18	78:20	79:15
37:4 49:13	34:15,18,	<b>styles</b> 39:13	<b>supporting</b>
	24 35:6,17	40:2,6	74:2
	36:2,10		

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**  
**Transcript of Trial Proceedings on 01/18/2019 Index: supposed..Thomas**

<b>supposed</b>	76:13	<b>Temple</b>	24:20	48:17 54:1
34:18 42:4				62:13
43:18 60:9	<b>systems</b> 34:6	<b>ten</b> 63:17		68:24
62:2	70:1 72:9	<b>tendered</b>		69:11,15,
		58:15		22 70:1,6
<b>Supreme</b>	<b>T</b>	<b>terminology</b>		74:6
77:22		29:18		76:18,20,
78:15	<b>table</b> 50:6	30:15		22 77:2
<b>survived</b>	<b>taking</b> 19:2	<b>terms</b> 29:10	<b>testing</b>	
75:24	79:4	38:15 40:2	26:11,15	
<b>susceptible</b>	<b>talked</b> 12:20	68:8,20	48:18	
70:4	15:18 53:4	69:4,20,22	55:17	
	69:25			
<b>sustain</b>	<b>talking</b>	<b>Terri</b> 8:25	<b>tests</b> 26:20	
20:15	27:15	9:13,20,24	55:10	
52:18	29:15	14:22	76:6,8,11,	
<b>sustained</b>	53:9,10	<b>terrible</b>	20 77:4,9	
24:15 53:2	81:6,8	79:8	<b>Texas</b> 34:4,8	
56:6 57:20	<b>tampered</b>	<b>test</b> 37:22	<b>there're</b>	
<b>sworn</b> 9:17	46:18	49:4 51:20	43:11	
18:9	<b>tampering</b>	<b>tested</b> 37:20	<b>thing</b> 11:4,6	
<b>system</b> 20:11	66:1	38:2,4	14:4 30:8	
28:22	<b>tape</b> 48:24	44:6	41:10	
29:20,22,	<b>technician</b>	<b>testified</b>	51:15,22	
24 30:1,4	43:13 54:6	9:17 18:9	57:4 66:9	
31:2,15	<b>technicians</b>	53:17,22	79:11	
32:4 35:25	54:6	55:8 67:4	80:2,11	
37:2,4,8	<b>telling</b>	69:17 72:2	81:4	
53:25 61:1	12:25	<b>testify</b> 7:20	<b>things</b> 26:13	
69:18	52:13	69:13	32:1 40:20	
70:2,4	<b>tells</b> 29:4	<b>testifying</b>	51:11 79:9	
72:4,8	30:25	61:15	<b>thinking</b>	
73:10,18	<b>telltale</b>	<b>testimony</b>	11:6 17:2	
76:13,18	73:10	8:20 19:13	<b>Thomas</b> 8:25	
79:6,8,11		20:13	9:13,20,	
80:25		23:15 43:4	24,25	
<b>systemic</b>				

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

Transcript of Trial Proceedings on 01/18/2019

Index: Thompkin..unit

14:22 16:2	<b>today</b> 72:6	52:25	<b>understand</b>
65:15	76:22	61:6,10	21:13
<b>Thompkin</b>	<b>told</b> 12:25	66:18	22:18 28:6
68:1	41:24 45:4	77:18	29:11
<b>thought</b> 28:8	<b>Traffic</b>	81:20	34:22
59:17	59:10		57:22
73:22,24		<b>U</b>	59:13
74:9,10	<b>trained</b> 39:1		62:22
<b>thousand</b>	<b>training</b>	<b>U.S.</b> 78:4,	79:18
80:17	19:2	10	<b>understanding</b>
<b>throw</b> 74:15	<b>Travis</b> 34:4	<b>ultimate</b>	19:18,25
<b>tick</b> 73:22	<b>treat</b> 20:17	35:18	22:22
<b>ticket</b> 43:13	<b>treated</b>	<b>Um-hmm</b> 49:24	24:11,20
53:25 54:4	66:22	<b>un-rebutted</b>	25:11
69:8 73:25	<b>trial</b> 63:9	72:18	26:25
74:8,10	<b>trier</b> 64:8	<b>unable</b> 42:18	48:17
<b>tickets</b>	<b>triers</b> 60:2	<b>unanimous</b>	49:25
53:22	<b>trouble</b> 50:6	72:11	51:18
54:9,11,20	<b>trusted</b> 20:2	<b>unanswered</b>	52:22
<b>tie</b> 66:15	<b>truth</b> 9:2,4	62:15	<b>understood</b>
<b>time</b> 11:18	17:22	<b>uncontroversia</b>	62:25
14:9 15:1	<b>TS</b> 67:4	<b>1</b> 76:6	<b>undertake</b>
16:13,15	<b>turn</b> 25:22	<b>uncontroverted</b>	35:15
24:18	31:2	70:6	<b>undertaken</b>
26:11	<b>type</b> 20:11	76:18,20,	80:6
32:25 48:6	25:13	22 77:2	<b>undisputed</b>
63:2 70:10	27:11	<b>under-vote</b>	69:15 70:1
71:24	<b>Tyson</b> 7:15	66:1,2,4,	71:10
81:22	16:1,2,4	15 67:6	<b>unfair</b> 59:17
<b>timely</b> 39:6	17:9 20:4	69:2,9	<b>uniform</b> 36:2
<b>times</b> 15:6,9	27:10	79:18	<b>unique</b> 46:10
48:13	31:18	80:11,15	<b>unit</b> 27:8
74:18	47:24	<b>under-votes</b>	30:20
		66:11 67:9	47:15

## COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.

Transcript of Trial Proceedings on 01/18/2019

Index: urge..worker

<b>urge</b> 59:22	69:20	80:13,17,	22,24
	70:2,4	18,24	47:18
<b>useless</b>	72:22		
62:22	73:24 74:8	<b>voting</b> 7:20	<b>watcher</b>
	77:1,4	11:9 12:15	23:17
<b>v</b>	78:13	16:18 17:4	<b>ways</b> 43:11
		19:11	
<b>valid</b> 61:4	<b>voted</b> 11:20,	30:13	<b>web</b> 37:18
67:15	22 12:24	32:20 34:6	70:1
<b>verified</b>	15:1,8,15	35:25 36:2	<b>webpage</b>
44:11	48:25	38:4 39:4,	60:17
		22,24	
<b>verify</b> 44:22	<b>voter</b> 13:22	40:1,11,20	<b>whatsoever</b>
46:13	19:4 25:6	44:6,13	74:20
<b>Versus</b> 68:15	28:11,13,	45:17	<b>Williamson</b>
	17,22	47:11	34:8
<b>victory</b>	29:4,25	49:13	<b>Winterville</b>
67:22	30:6,10,	61:13	80:13,18
<b>view</b> 62:4	11,13,17,	68:24 73:2	
73:13	22 39:6	76:13	<b>witnesses</b>
	41:2,11,25		8:18 58:10
<b>violation</b>	42:15,18	<b>vulnerable</b>	67:4 68:25
80:9,10	43:10	31:15 65:6	77:13
<b>viruses</b>	69:4,20	71:6,11	
36:15,22	73:2 74:6,	72:8,13	<b>woman</b> 15:4
37:6	18 77:1	73:18	48:4,8
	78:8	77:20	65:13
<b>vote</b> 10:11,			<b>word</b> 29:13,
13,15	<b>voters</b> 40:8		15 51:9
12:4,22	41:8,9	<b>W</b>	68:6
14:15	67:10 69:4		
16:11	70:2 73:9,	<b>waiving</b> 79:1	<b>words</b> 29:13
28:25 30:6	22	<b>Walden</b> 59:8	<b>work</b> 34:6
39:25			70:22
40:9,13,15	<b>votes</b> 48:22	<b>wall</b> 38:13	80:25
42:18	49:17	<b>wanted</b> 7:10	
44:15	65:8,11,22	16:6	<b>worked</b> 34:4,
48:22	66:17	<b>warehouse</b>	6
65:13,18	67:22,24	45:6,8,9,	<b>worker</b> 25:4
66:8 67:11	78:1	10 46:13,	28:13
	79:17,18		

**COALITION FOR GOOD GOVERNANCE, ET AL. vs ROBYN A. CRITTENDEN, ET AL.**

**Transcript of Trial Proceedings on 01/18/2019 Index: workers..younger**

30:22 42:8 63:11 72:2

43:11,15 73:20

65:17

**yesterday's**

**workers** 19:2 19:13

38:25

**younger** 48:9

39:1,2

44:10,22

46:11

**working** 7:11

52:22

**works** 39:22

**worry** 48:10

**worse** 71:13,

17,18,20

**write-in**

67:8

**writing**

11:13

**written**

75:13

**wrong** 42:4,6

**wrote** 14:6

---

**y**

---

**years** 18:22

53:20

71:15

78:11

**yellow** 28:11

**yesterday**

20:13

23:15

61:15